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HFW

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SUSTAINABILITY IN OUR SECTORS

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HFW

SUSTAINABILITY IN OUR SECTORS

HFW is a leading global law firm with deep, sector-focused expertise, that is committed to promoting sustainability in its sectors.

Welcome to the latest HFW Sustainability Quarterly.

In this first edition of 2023, we analyse key issues across global markets and consider the next steps in sustainability.

In this edition's *Client Spotlight*, we hear from the Head of Sustainability at France-based Avril about the company's environmental transition and how important it is to engage employees across the business in the journey.

We take a closer look at the work of our global charity partner, The Air League. This organisation champions the young people shaping tomorrow's aviation industry and provides scholarships and support whilst promoting sustainable strategies.

With weather related incidents at an unprecedented high, liability and risk in the insurance sector is changing. On page 16 we have a write up of our recent webinar which examined the complexities of pricing, growing levels of litigation and how to accurately quantify climate change.

As always, we are very pleased to include the most recent legal and regulatory updates, sustainability news, and the latest in HFW's own ESG initiatives.

We always enjoy hearing from you, so please do feel free to drop us a line with any feedback, comments or enquiries about our expertise.

Giles

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Legal Updates

Edited by Kate Ayres, HFW Knowledge Counsel

Legal challenges to EU taxonomy's "green" label for gas and nuclear energy

In July 2022, the EU passed a law designating gas and nuclear as sustainable energy sources in the EU taxonomy. The taxonomy is aimed at encouraging investment in clean energy projects as part of the EU's European Green Deal, its plan to reach net zero by 2050. The inclusion of gas and nuclear, which were originally omitted, has proved controversial.

The European Commission is now facing a number of legal challenges to the designation, including from various environmental groups. In October 2022, Austria submitted a complaint to the Court of the European Union, arguing that gas and nuclear do not fulfil the requirements of the taxonomy not to cause significant environmental or climate-related harm and that the last-minute nature of their inclusion was unlawful, along with other procedural objections. The law came into force on 1 January 2023 and the legal challenges are likely to take several years.

AMANDA RATHBONE
Knowledge Counsel,
Commodities

France: Greenwashing criminalised and stricter advertising controls come into force in early 2023

We have reported previously on the wide-ranging Climate Law (Loi "Climat et Résilience") enacted in France in the second half of 2021. The Climate Law included advertising controls, elaborated upon in Decree No. 2022-539 of 13 April 2022, which came into force on 1 January 2023. The Decree specifies the obligations applicable to organisations who intend to use certain terms such as *"carbon neutral"*, *"zero carbon"*, *"with a zerocarbon footprint" "climate neutral" "fully/100% offset"* or any equivalent formulations in their advertisements. These entities must now publish on their websites a detailed report of the carbon footprint of the product or service being advertised, containing information about the processes by which they will avoid, reduce and offset the relevant greenhouse gas emissions. The Decree contains detailed requirements for the objective standards that must be used to describe and benchmark these processes. The information must be updated annually. Non-compliance will result in a fine of up to 100,000 euros or the total amount spent to create the illegal advertisement.

The Climate Law has also strengthened the French anti-greenwashing arsenal by amending the Consumer Code in two significant ways. Misleading advertising practices in general were already unlawful, and French courts had already used the general prohibition to penalise greenwashing. However, the Consumer Code now expressly outlaws misleading claims made about *"environmental impact"* and *"commitments with regard to the protection of the environment"*. Even more remarkably, the Article L.132-2 of the Consumer Code now provides that (in addition to a substantial fine) the penalty for such an infringement is two years' imprisonment, putting management at personal risk when carbon neutrality measures and strategy are overstated. To read more about these developments, see **the October edition of HFW Aero**.

ENZO PANNOZZO
Associate
Aerospace

FuelEU Maritime moving towards adoption

Following the inclusion of international shipping in the EU's Emissions Trading System (see page 8), attention is turning to another draft regulation, FuelEU Maritime, which is currently being negotiated by EU legislators with the final legislative text awaited.

FuelEU Maritime sets a limit on the greenhouse gas (GHG) intensity of fuel used by applicable vessels on voyages to/from EU ports which is to be measured on a well to wake basis, with the limit decreasing between 2025 – 2050. The regulation aims to promote renewable and lower-carbon fuels (e.g. biofuels), and penalties will be imposed for non-compliance.

Numerous potential legal risks and costs arise under FuelEU Maritime (discussed **here**), and participants in the sector need to assess how these can be managed on an ongoing basis within their existing and future contractual relationships.

JOHANNA OHLMAN
Associate
Shipping

COP27 and shipping: building momentum?

COP27 featured less shipping-specific activity than COP26 last year. The only major announcement was a progress report on 'green corridors' (specific shipping routes where zero-emission technologies and fuels are supported and incentivised), revealing that more than 20 initiatives are under development involving no less than 24 governments and 86 other stakeholders.

This is not necessarily a bad thing. Commentators suggest that COP27 featured a move away from ***"siloed approaches to green shipping as a stand-alone sector***", and towards the integration of shipping within the broader energy transition (**Maersk's agreement with Spain for the production of e-methanol** is an example).

The question now is whether this dialogue has translated into concrete action at the IMO's Marine Environment Protection Committee, discussed at page 9.

JOSEPH MALPAS
Associate
Shipping

"In July, the EU passed a law designating gas and nuclear as sustainable energy sources in the EU taxonomy. The inclusion of gas and nuclear, which were originally omitted, has proved controversial."

CLIENT SPOTLIGHT

Avril

In our newest regular feature, *Client Spotlight*, we find out from companies in their own words how they are adopting sustainability into the heart of the business, best practices and future goals. This issue we hear from **Clément Tostivint**, Head of sustainability at Avril.

The bright yellow flower of the rapeseed plant blooms in April, Avril in French, and this was the inspiration for the name of our company. It speaks of Spring, and of renewal.

Today as an industrial and financial pioneer within the French vegetable oil and protein sector, seeds from rapeseed and sunflower are at the centre of our business. We produce consumer food, animal feed and are also heavily involved in the chemical and energy sectors thanks to the use of our various co-products.

Avril is a company of about 7000 employees with a turnover close to €7 billion. We were founded 40 years ago by French farmers who recognised that there was a strong dependency on imported soy from the US. They decided to organise themselves into a group which could create stronger value chains in France. These producers invested significantly in industrial science in order to valorize the oilseed sector in our country.

As well as our industrial activity we also have an investment business unit which provides financing solutions such as minority shareholdings or loans, in French and European agricultural and agrifood companies. Our model is unique and through our activities we can really have a positive impact across our whole value chain.

As Head of Sustainability, I am in charge of the overall CSR performance of our group, and I manage major sustainability programmes including our decarbonisation strategy and progressing in responsible purchasing.

Currently we are in the midst of a huge transformation project. We recently revealed our group's purpose 'Serving the Earth'. We want to create a mindset shift for the better across the whole company and increase our contribution to society.

For us, 'serving the earth' means both protecting the planet and having a strong link with the farmers and what they produce. It was really important to us right from the outset that this was not simply a nice tag line. We wanted it to be more than that. So we made six bold commitments that all our employees can be involved in to build a sustainable corporate identity.

There is always the risk of green-washing when you develop these sorts of initiatives, and we wanted to make sure this wouldn't happen. So we have made concrete undertakings, particularly when it comes to climate, and we committed to reduce our carbon emissions by 30 percent before 2030, versus 2019 levels. We are also looking carefully our agriculture impact, the imported raw materials which could have a deforestation risk, and our investment in people. Indeed, one key commitment is to make Avril a more collective and more inclusive company. For instance, we are well aware that we have progress to make in terms of increasing the number of women in top management and across the company. This is especially true in industrial settings.

In order to ensure that the initiative has a long-term impact, we put a lot of effort into its roll out. We wanted to involve every employee in our journey. This has been done through discovery and discussion sessions so people learn and experience the concept for themselves.

This purpose is really important to us because we feel we're at the crux of three major transitions in food, agriculture and environment. Since our role is to transform agricultural raw materials into food and energy, we believe we can influence both upstream and downstream activities. We depend on the planet and equally a lot of the country depends on the processes and products we deliver.

Of course, there are challenges along the way. Decarbonisation is a major one. Energy consumption in our plants is the main driver of our direct carbon footprint with regard to scopes 1 and 2. Here we can act directly. It will mean money and time but it's possible. When it comes to indirect footprint, scope 3, a very large part comes from the agricultural raw materials we purchase from traders and cooperatives. Our main challenge concerning climate is to look upstream in order to reduce this footprint.

New technology is definitely speeding up the transition. This is true of industrial and production processes which can use new enzymatic chemistry and less energy. On the upstream side, new technologies are making a big difference through things like precision farming, satellite monitoring, and new crop varieties which require less inputs.

However, implementing new technology requires new business models as it has to be profitable. For instance, producing low-carbon agricultural products is more expensive. We have to find outlets willing to pay this premium. We have started to market a low-carbon biofuel product called OleoZE made from seeds grown with agroecological best practices such as increased carbon storage, and less synthetic fertilisers. We aim at to replicating this approach in our value chain.

Climate change is happening now, and we are moving forward as an industry through our strong links to agriculture and nature. The question is are we moving fast enough? No-one can be completely sure what it's going to look like in 20 years, but I want to feel optimistic.

When you engage in climate transition you have to hope that everyone will do their part. We are trying our best to reduce our carbon emissions, but we're also relying on our industry partners to make the same efforts in this respect. We are all interconnected. The issue is no longer whether a certain company will move forward, but whether the whole industry will. Only a collective effort will lead to progress.

"Climate change is happening now, and we are moving forward as an industry through our strong links to agriculture and nature."

Avril The vital sustainability statistics

30% of employees are **female**

30% reduction in all direct and indirect **greenhouse gas emissions** pledged by 2030 (vs. 2019)

100% of **palm and soya** products pledged to come from **sustainable agriculture** by 2030

$ € £ 100% of **investments** to be based on economic environmental and social criteria by 2030

50% of the added value created in 2021 **reinvested** to develop the agricultural and processing sectors.

All eyes on maritime

Shipping emissions under increased regulatory scrutiny from 2023 onwards

2023 heralds the start of increased regulatory scrutiny of the maritime sector's greenhouse gas (GHG) emissions, due to new environmental regulations targeting the sector.

EEXI and CII

From 1 January 2023, the IMO's latest energy efficiency measures – the Energy Efficiency Existing Ship Index (**EEXI**) and the Carbon Intensity Indicator (**CII**) – came into force.

In summary, EEXI is a *technical* measure aimed at improving the energy efficiency of the existing design of applicable vessels. CII, on the other hand, regulates the *operational* carbon intensity of applicable vessels – i.e. how efficiently vessels transport goods or passengers.[1]

Vessels caught under the EEXI regime will have their estimated actual energy efficiency (**Attained EEXI**) compared against a required standard (**Required EEXI**). Where the Attained EEXI is less efficient than the Required EEXI (which may be more likely with older tonnage), technical modifications are likely to be required. However, the EEXI regulations do **not** prescribe what type of modification is required – the Required EEXI simply has to be met, and a vessel's ability to do so will depend on its age, type, size and design.

Vessels caught under the CII regime will be awarded a 'CII rating' of A to E annually (**CII Rating**), based on a comparison between their annual carbon intensity performance over the previous year ('attained annual operational CII' or **Attained CII**) and a target called the 'required annual operational CII' (**Required CII**). The Required CII will become more stringent over time, therefore demanding improvements to applicable vessels' Attained CII. A vessel which attains a CII Rating of D for three consecutive years, or a CII Rating of E at any time, will be required to develop a plan of corrective actions to be included in Part III of its Ship Energy Efficiency Management Plan (**SEEMP**).

Similarly to EEXI, the CII regime does **not** prescribe what measures should be taken to improve a vessel's carbon intensity performance/CII Rating. There are various options available; in most cases, operational adjustments will be required during the vessel's trade, such as reducing speed/slow steaming and/or reducing cargo volume intake. Improved performance could also be achieved via optimised ship handling and onboard energy efficiency (e.g. trim, ballast, optimum propeller, improved hull maintenance, and possibly even retrofitted equipment). However, there are other factors outside of anyone's control which may have an impact, such as adverse weather and extended port stays.

Compliance with the EEXI and CII regimes present various significant commercial and legal challenges, and cut across the traditional contracts used in the shipping industry today.[2] The CII regime in particular poses significant challenges, notably in the time charter context. This is because the operation of the vessel (which is subject to the time charterers' orders) will have a direct and significant impact on the vessel's Attained CII, and any preventative steps (such as slow steaming, deviating or reducing cargo intake) would, on the face of it, place shipowners in prima facie breach of their charterparty obligations, such as despatch obligations, employment orders, and speed and consumption warranties. In other words, a real commercial headache for all the main stakeholders in the physical transport chain.

EU Emissions Trading System (EU ETS)

In December 2022, EU legislators agreed a package of reforms to the EU ETS. As part of these reforms, emissions from international shipping will be included in the EU ETS for the first time.

At the time of writing, the finalised legislative text for the reformed EU ETS is yet to be published, but it is expected imminently. As such, various important areas of uncertainty remain.[3] For example, it is expected that in general terms the EU ETS will apply to 100% of emissions generated during intra-EU voyages and 50% of emissions generated during inbound and outbound voyages between the EU and all other non-Member States, although there might be notable deviations from this in respect of certain voyages and ports called at.

Further, whilst the entity responsible for surrendering EU ETS emissions allowances (**EUAs**) in the draft legislation is the 'shipping company' – defined as the shipowner or any other party who has assumed responsibility for the operation of the ship (likely to be the ISM Document of Compliance holder) – EU legislators appear to have agreed that commercial operators of vessels should be liable for the costs of compliance. How this can be enforced by responsible 'shipping companies' remains unclear. Proposals during legislative drafting referred to *"contractual arrangements"* but also *"necessary measures"* or *"national laws"* implemented by EU Member States themselves. How that might work in the shipping industry (which involves private contracts, may well involve non-EU based parties, and might provide for a non-EU law and jurisdiction) remains to be seen.

A related issue is whether a proposal to limit access to the market for EUAs to *"regulated entities"* and persons authorised on their behalf has made it into the final legislation. If it has, then this might mean that commercial operators would not be able to purchase and transfer EUAs to the responsible 'shipping company', further complicating the picture in terms of how the risk and cost of compliance is allocated.

Further measures?

Additional measures aimed at reducing the GHG emissions of the maritime industry are likely to be adopted in 2023, further complicating the regulatory landscape albeit pivotal to the shipping sector's path towards decarbonisation.

Within the EU, FuelEU Maritime is currently being negotiated (see page 5). On a global level, further measures may also be agreed at the 80th meeting of the IMO's Marine Environment Protection Committee (**MEPC**) in July. Based on discussions at the 79th MEPC meeting in December 2022, this could include:

1. a revision of the IMO's GHG emissions reduction strategy, with significant support for a form of zero emissions by 2050;
2. a fuel standard to incentivise the use of alternative fuels;
3. a tax/levy on emissions, a 'feebate' scheme or a 'fund and reward' scheme applicable to GHG emissions as an economic incentive for reduction; and/or
4. possible amendments to EEXI, CII and the Energy Efficiency Design Index (EEDI).

How HFW can help

It is clear that significant challenges lie ahead for shipping, and industry participants will need to review their asset portfolios and contracts in order to ensure that the risks and costs involved with the regulations we have discussed are appropriately serviced and managed. Contractual frameworks and solutions will be required and HFW are advising clients across all sectors on how best to put these in place and, importantly, navigate the new regulatory landscape.


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1 See **HFW | reducing international shipping's carbon intensity through the imo's eexi and cii: charterparty implications and challenges**

2 See **HFW | Decarbonisation in shipping: contractual and charterparty issues** Please note that the comments in this article regarding the EU ETS were based on an earlier draft version of the legislation which is in the process of being finalised

3 See **HFW | EU emissions trading system: current status and key issues**

Aluminium: **Building on the past to face the future**

Key messages from the 2022 Arabal *Enabling a more sustainable future* conference

Pursuing the goal of sustainability in the aluminium industry is complex and challenging, like construction of the pyramids 4000 years ago. The effects will also be enduring. This was therefore an excellent theme for the 2022 Arab Aluminium conference and Cairo the perfect location to consider it.

Power of the gods or lap of the gods?

The powers of the sun, water and the wind, well-understood by Ancient Egyptians and represented by their gods, needs harnessing for the modern and energy intensive aluminium industry.

Taking place a matter of weeks after Egypt hosted COP27, the Arabal conference recognised the progress towards Net Zero achieved and still needed in the industry. But the questions of energy supply and cost were also at front of mind of the 300-strong delegate body, as they heard how industry leaders planned to manage the booming demand for their product – in part generated by the energy transition.

Sphinx-like, aluminium is two creatures at once: a key component of a greener future for mankind, providing a light-weight sustainable buildings, minimising the weight of electric cars and offering strong, light and recyclable packaging for many products, such as soft drinks. The back-story of carbon emissions and environmental, social and governance challenges in the supply chain though is like the lion's body, which needs to be tamed.

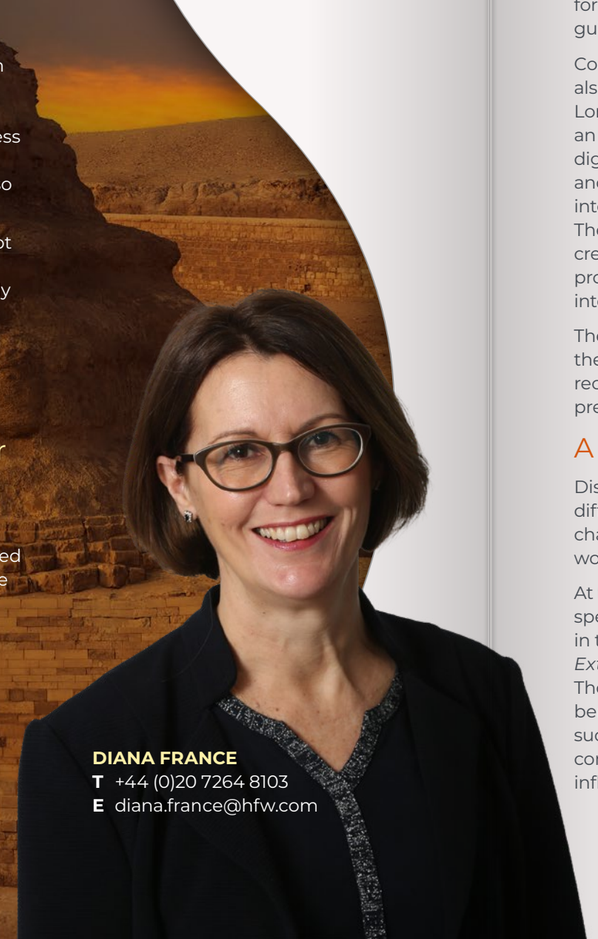
The conference heard that low carbon aluminium was scarce, sources concentrated geographically and technologies to minimise direct process emissions not yet fully developed. Decarbonising the fuel supply was also proving difficult.

Early concerns that renewables did not generate high enough temperatures had given way to worries that relatively young smelters were designed to use fossil fuels. Would these be scrapped and high levels of investment be committed to decarbonise the industry?

Investors, corporations or industry bodies: which is the modern pharaoh?

The topic of sustainability encompassed Environmental, Social and Governance issues, the subject of a sold-out pre-conference workshop focusing on contractual and other commitments, led by HFW's Diana France and Fishwary & Shazly's Soliman Soliman.

ESG had developed from its origins in the 1960s, when investors' and lenders' power to influence corporate behaviour began to be recognised.



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The workshop considered the current broad range of issues it embrace and how strategies should be formulated and implemented to address them. Ambitious targets were needed, avoiding the dangers of greenwashing, on the one hand and making commitments which could not be fulfilled, on the other.

With many participants representing companies wholly or partially government owned and financed, there was as strong feeling that ESG was now less about investors and more about doing *the right thing*, daunting as this was. They took up the speakers' calls to cooperate engaged with each other to share best practice and ideas during the conference.

The industry's ability to collaborate is exemplified by the Aluminium Stewardship Initiative, which is a vehicle for establishing standards and giving guidance to smelters internationally.

Cooperation and transparency were also behind the *digital passport* of the London Metals Exchange, providing an accessible, transparent and reliable digital record of the origin, purity, size and shape of a batch of metal delivered into and out of the LME ecosystem. The passport could also contain ESG credentials associated with the metal's production and was discussed with interest in the workshop.

The need for alignment amongst these and other valuable initiatives was recognised, in order to create clear and predictable principles for supply chains.

A monumental challenge

Distinct ESG challenges arose at different stages of the aluminium value chain and were raised during the ESG workshop.

At the bauxite mining stage, there were specific considerations, addressed in the OECD's *Guiding Principles for Extractive Industry Contracts 2020*. Those principles note the social benefits which could be realised, such as in employment, worker and community welfare and a positive influence on governments.

They also emphasise the need for sensitive environmental impact assessments and the minimisation of emissions, pollution and noise, as well as the safeguarding of natural resources, such as water at the construction, operation and decommissioning stages of the mine's life. But this required time, resources and commitment in engaging stakeholders and adapting operations.

Delegates felt that the commitment had to be made to identify and manage ESG risks impacting the local environment, local society and beyond, accepting the double materiality of an effect on the company itself of many risks.

Failure to engage adequately with workers, governments and communities, for example, could lead to withdrawal of support for operations, with consequences as severe for companies as for local and other stakeholders.

Similarly, climate change could cause adverse weather interrupting operations, but was also exacerbated by those operations, with three percent of global anthropological emissions in 2021 attributable to the sector.

In the arena of governance, the detriment caused to a company by inappropriate senior and other appointments, cronyism and corruption was also felt by the society in which the company operated and more widely.

Unification, authority and influence

Good corporate governance also dictated constant monitoring of legal developments throughout the value chain. One such was the European Union's Carbon Border Adjustment Mechanism (CBAM), like the pharaoh's double red and white crown, a symbol of the power of unification to protect subjects and exert influence abroad.

HFW's Diana France explained that the CBAM's goal was to accelerate progress towards Net Zero, whilst not disadvantaging its own industry which had for some time required a permit for each tonne of greenhouse gases emitted.

So far, a reducing number of free permits were granted to companies covered by the EU's cap and trade scheme, but they would be phased out after the CBAM was introduced. Importers would then pay a tax designed to match the cost of the allowances which would have been required if the production had been within the EU.

How the CBAM affected the aluminium industry would depend on the fine detail of the scheme, such as where along the value chain the tax would apply: too far down and too little protection would be afforded to the struggling EU industry, too far up and too much.

Everlasting life

Amid these challenges and concerns, the conference kept in mind the head of the sphinx: aluminium was a major component of solar panels, electric vehicles and other products necessary for the energy transition, as well as being infinitely recyclable without deterioration.

The industry's was reducing its carbon footprint could by increasing the recycling of production scraps and end of life goods. Closed loop recycling, where a product such as a drinks can could be recycled and refilled in a short space of time brought the circular economy a step closer.

A legacy

Had the leaders and engineers of the Arab aluminium industry needed inspiration to meet the challenge of maximising sustainability in their sector, they needed to look no further than Cairo's ancient monuments, the Great Pyramid itself representing the combined imagination and determination of the father Pharoah Snerferu, who grappled with the construction of three pyramids to achieve success, the prototype of the seven wonders of the world erected by his son, Khufu.

Diana France is a partner in the firm's Corporate and Commercial Group, specialising in energy, digitalisation and sustainability

THE AIR LEAGUE
Changing Lives Through Aviation

Charity partner focus

The Air League

We talk to The Air League's Sustainability Lead Bridget Donaldson about the work the charity is doing, why sustainability is so important for the industry and how young people are shaping the future of aviation

The Air League was founded in 1909. What are its origins?

The Air League was originally set up as a politically focussed organisation and was instrumental in developing an aviation agenda within government. Over the years it has changed focus and is now a not-for-profit organisation. Launching the Air Cadet organisation in 1938 was the first move within the charitable sphere and we began to take a real interest in supporting young people. This has developed over time and now we're the biggest provider of flying and engineering scholarships in the UK. With the support of our key partners, which include Airbus, Boeing, British Airways and Rolls-Royce among others, we distribute funding and resources into our scholarships and outreach programmes to help young people get a taste of an industry they might not otherwise have had the opportunity to discover, whether that's military or civilian aviation.

It has at its core the vision to change lives through aviation. How is this achieved?

We have a variety of different programmes which are really powerful. Over 100 young people have benefited from our scholarship programmes over the past year, all with different and inspirational stories, is extraordinary. I grew up in Newcastle and my parents didn't have the means to support me into an aviation career - it was the Air Cadets and the Air League which kickstarted my passion for aviation. I had always thought that pilots were superhuman with straight As at school, and I didn't think I'd ever be that person. Today I have a private pilot's licence, I'm working in aviation and doing a PhD in Sustainable Aerospace Engineering at Oxford University. I definitely wouldn't be where I am today without the support of the Air League. The organisation is so unique because we take a chance on young people who otherwise would not have had that chance. A colleague of mine has a similar story, growing up on a council estate and working as a postman, he always dreamed of being a pilot. Through the support of The Air League he received a flying scholarship which helped him achieve his PPL and was later successful in joining the easyJet cadet programme and is now a commercial pilot. We have so many people across the industry, such as engineers, air traffickers, and cabin crew all with similar stories.

How do the partnerships with major industry players come about?

We have several long-standing partners, and our trustee board is also made up of people such as directors from the biggest airlines, senior military personnel, and various senior executives from across the industry. Over the past few years, it's been a little difficult to justify why people should be spending money on aviation rather than perhaps encouraging young people to go into industries with more quantifiable benefits to society. But aviation connects the UK to the rest of the world and it's not just about aviation, it's also about giving young people life skills and opening their eyes to a different perspective on the world, creating friendships, and networking.

“There are people who are resigned to the fact that it’s never going to happen successfully in their lifetime, so it is critical that we inspire the younger generation.”

However, we do need to refocus and sustainability is the driving force behind every part of the aviation industry – it’s how the industry is going to keep flourishing. We need to be looking at the next few decades and that is why I am passionate about instilling sustainable air mindedness with every programme we deliver.

What are the other sustainability focused ventures and collaborations you are working on as an organisation?

We are currently developing a sustainable aviation, aerospace and space collaboration. The aim is to ensure we stand in solidarity with the rest of the industry, putting sustainability at the heart of everything we do as an organisation and enabling us to bridge the gap between young people, industry and government.

At the moment we are asking all partners of The Air Leaque within industry, defence and government to work with us to support young people in the field of sustainable aviation. Every organisation we work with offers something different. So we might get funding from one company or physical placements and opportunities from another. Everybody has a role to play in securing the future of the sector and supporting our young people especially in a constantly adapting and changing industry. We welcome a constant commitment from organisations which will put young people at the very heart of all we do, going right down to grass roots level. I hope our organisation can act as a platform for real collaboration across the industry, with a genuine focus on young people and their future, leading us to a sustainable sector and a historic new age of aviation.

You are also in the process of finalising the UK’s first electric flying scholarship. What will this entail?

It’s going to involve a battery powered electric aircraft, which is charged up at the airfield. We want the whole flight element and the scholarship itself to be completely green. One of the airfields we are working with is looking at generating their own electricity through solar and wind, as well as collaborating with their local grid. We are also thinking about how the scholar will travel and be accommodated. There are quite a lot of initiatives such as tree planting at the airfield and local area and we’d like to build in activities such as this into the programme. It’s a small drop in the ocean but it’s a start.

How far are we realistically away from a carbon neutral aviation industry?

Even though aviation contributes only around 2-3 percent of global emissions, we’re quite some way off. If it was just domestic flying it would be a lot easier as we could use policy instruments to control things like fuel acquisition and infrastructure. But globally it would take billions of pounds to change the set up and infrastructure of airfields internationally, so it’s a question of who picks up that bill. Is it the country itself or is it the international operator? Equally, SAFs (sustainable aviation fuels) are not scalable at the moment and in the longer term, we cannot expect operators to stop using perfectly working existing aircraft platforms in place of new concepts. That said there are brand new concepts in the works that we won’t have even heard about yet.

Why are partnerships like the one with HFW important?

HFW is a corporate member of The Air League. In the past few years, we’ve started to work with organisations that typically we wouldn’t have in the past, and HFW is a good example. It is not an aerospace engineering company, airline or airport, but today we are really keen to promote careers outside of the traditional aviation or engineering space. As a law firm HFW demonstrates the possibility of legal careers in the industry, something which our young people may not have ever considered. We always see HFW representatives at our events, and they’re very actively engaged in the charity. It’s really important for us to show every aspect of the aviation industry and promote different career paths.

How do you feel about the progress being made in aviation industry in terms of sustainability?

It’s taken a while for attitudes in the industry to change and it’s only in the last 18 months that we’ve started to see really positive change towards a sustainable aviation industry. Previously the work that needed to be done was quite underestimated. Post-Covid, everybody seems to be on board as to how it is the key to change.

It’s a massive challenge but I do feel positive and it’s not something that’s going to happen overnight. Issues with international policy, infrastructure, technology development and trying to change attitudes are not easy to overcome. There are people who are resigned to the fact that it’s never going to happen successfully in their lifetime, so it is critical that we inspire the younger generation. They are the ones who are going to change the world.

The biggest risk of all: insurance and the threat of climate change

In the fourth of HFW's regular sustainability webinars **Georgie Tuffin**, Reinsurance Broker and Senior Catastrophe Modeller at Gallagher Re Insurance discusses the risks and liabilities of climate change in the insurance sector.

Weather and climate related disasters are at an unprecedented high. In 2021 the US experienced 20 incidents that resulted in over one billion dollars of losses, compared to an average of approximately eight per year between 1980 and 2020[1]. This alarming trend looks like it is here to stay.

While it is true all industries are affected by climate change, for insurers there are some particular challenges. The very business of insurance is to spread liability, and these risks stand to worsen as time goes on. It is increasingly critical insurers are able to measure and understand the risks across their entire portfolio. Meanwhile there are huge regulatory pressures and significant public scrutiny from campaign groups and protestors who want to see the end of the use of fossil fuel.

On the positive side, this is an industry which has a wealth of resources and innate knowledge to help policy makers and insurers assess risk and develop new products to drive resilience going forward.

A growing focus

Regulatory requirements are one of the number of factors behind examining and reporting climate change risks, and the UK and Europe are leading the way as the only jurisdictions currently to have binding measures in place, with the rest of the world following. Thought leadership and ESG awareness are also key drivers, especially as the industry focuses on resilience and mitigating business risk. There is a noticeable shift towards businesses wanting to be more proactive. 'While we can be relatively robust about predicting how the planet will warm,' Tuffin explains, 'understanding the impact on perils is much harder to quantify and examine.'

The impacts of climate change are wide ranging and potentially cataclysmic. They are expected to include stronger tropical cyclones, increased wildfire risk, rising sea levels, a tripling of subsidence levels in the UK, up to six million more people in Europe subject to flooding, and 970 cities globally to experience extreme heat by 2050 compared to 350 today.

Tuffin goes on to point out that there is plenty more to be done in developing a solid understanding of the critical components in the insurance industry. A more academic approach is increasingly being taken with partnerships developing between insurers and brokers and universities. The analysis of the impact of climate change risk on the insurance industry can be broadly broken down into three areas. Physical risk which relates to direct damage to assets or property leading to increased and more complex claims; transition risk, which concerns disruption caused by the transition to a low carbon economy by, for example, policy or social change; and thirdly liability risk, which can be caused by not taking into consideration the impacts of climate change.

The complexities of pricing

How exactly to incorporate climate change into pricing is a very valid concern and one Tuffin says she encounters regularly. It is a trend which is not only happening already across the industry, but one that will continue apace.

However, it is a complex issue as catastrophe models are retrospective in nature. They do not account for the climate change influences we are experiencing today, so they need to be conditioned to fully capture the impacts of climate change to ensure greater accuracy.

It is often asked why climate change should be a factor in pricing when insurance is generally a single year product. The answer lies in extreme event attribution - the science behind the assessment of whether an event was influenced by climate change. The science dictates that if part of an event could be attributed to climate change, it is important to consider what becomes the proximate cause – could it be increased CO2 in the atmosphere? While quantifying climate change is a notoriously difficult thing to achieve, it can be done by using methods such as probabilistic model adjustments, scenario modelling to stress test programmes with different parameters, hazard maps to indicate risk scores and understand how much of a portfolio is highly susceptible to climate change; and climate conditioned underwriting layers.

'If we're seeing climate change being loaded into pricing, it should also be loaded into capital models,' says Tuffin. 'It is being quite widely taken up across the industry. For example, we recently saw AM Best come out and factor ESG scoring into their ratings. This is really significant, and it is only going one way. We'll also start seeing insurers making more educated shifts in terms of the long-term reinsurance partner they're using.'

"I expect major players to be coming out and making bold moves imminently. We need to have a concrete plan for mitigating risks."

Litigating climate change

Recently the industry has seen record highs in new claims related to climate change, with the vast majority coming out of the US. Part of the reason behind this is the increase in regulatory scrutiny around assessing litigation risk and how to quantify that. Tuffin draws on CBES' 2021[22] hypothetical legal cases, and highlights three issues which are particularly pressing; greenwashing, directors' breach of fiduciary duties and indirect causal contribution.

The Hague District Court's decision against Shell last year was particularly significant as it was the first major climate change litigation ruling against a corporation. Shell was ordered to reduce the group carbon emissions figure by 45% by 2030. 'What was really interesting,' she points out, 'was that 85 percent of emissions were classified as scope three emissions - indirect emissions from third parties. This indicates that rulings against a company may encompass its total global value chain.'

Looking to the future

Lloyds and individual insurers are being targeted by organisations such Extinction Rebellion and other protest groups who say they have not gone far enough in ceasing to underwrite carbon intensive assets. These groups raise a question mark over whether the collective industry is doing enough.

'We are aware of the issue and want to address it but it's very much a case of you can't just turn the taps off,' says Tuffin. 'There is an element of greenwashing in terms of insurers saying that they do want to be more ESG friendly and address their books but not necessarily doing that.' As the industry continues to do more in setting its plans to transition to low carbon into motion, being more explicit and transparent in how it is going to be achieved is important. 'I expect major players to be coming out and making bold moves imminently. We need to have a concrete plan for mitigating risks.'

The value of a greater ability to quantify climate change stands to have a direct effect on the industry's capacity to adapt and innovate. In terms of products there has already been increased innovation hitting the markets, such as parametric solutions, carbon offsetting and green cat bonds. On the pricing front risk prices are being adjusted today and will continue this way going forward, along with loaded capital models and (re)insurer panel selection. Tuffin also predicts that there will be increased frequency and complexity in claims, and a shift in how quickly they'll be able to be settled given the changing nature of risk.

1 NOAA National Centers for Environmental Information (NCEI) U.S. Billion-Dollar Weather and Climate Disasters (2022). **Billion-Dollar Weather and Climate Disasters | National Centers for Environmental Information (NCEI) (noaa.gov)**

2 **https://www.bankofengland.co.uk/stress-testing/2022/results-of-the-2021-climate-biennial-exploratory-scenario**

HFW Sustainability News

Sustainability Series

Since September 2022, HFW has been running an internal education and engagement campaign called Sustainable Change across a key sources of emissions in our own lives. So far, we've examined food waste and fashion, with additional sessions to follow on Travel, Energy and Money.

Each area of focus has a three-fold approach:

- Outlining the problem, it's scale and impact on the planet.
- Outlining innovation and action to address the issue globally, and action HFW is taking specifically where relevant.
- A call to action for colleagues to be empowered to take steps to address their own impact.

In our food waste challenge, colleagues were encouraged to use Too Good to Go to help reduce food waste and to help colleague save money.
In our fashion challenge, coinciding with International Men's Day, we encouraged colleagues to donate unwanted clothing to homelessness charities. In London alone, we donated over 130 items to the West London Mission to support their working helping veterans to get off the streets and into housing and secure employment.

Sustainable Recruitment Alliance Pledge

We have recently signed the Sustainable Recruitment Alliance pledge.

The Pledge: For decades we've been handing out piles of post-it notes, highlighter pens, stress balls and chargers at careers fairs. The list of stuff goes on and on. A lot goes straight to landfill. We need to start thinking differently and start now. Our purpose is clear: to get organisations to take an eco-friendlier approach to early talent recruitment. We're asking everyone in the sector to get involved. We all have the power to make a difference.
Find out more.

HFW's Graduate Recruitment & Development Manager, Lucie Rees says:

"Having worked in early talent recruitment for many years, it has been encouraging to see sustainability become an increasingly important factor in how the legal profession approaches recruitment It is important we take responsibility for the way we do things."

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