SQUIRE PATTON BOGGS

WiFi Details
SSID - SPB-Client-INET
Password – GlobalInfluence

Annual Environmental, Safety & Health Conference 2023

Tuesday 27th June 2023

Agenda

9:00am		Registration and breakfast
9:25am	Rob Elvin, Squire Patton Boggs	Welcome
9:30am	Heather Beach, Healthy Work Company	"Creating psychological safety in your workplace"
10:15am	Dr Rachel Ward, Exponent	"Incorporating intelligence to keep risk management models relevant"
11:00am		Refreshment break
11:15am	Chris Occleshaw, Sedgwick	"Impact of supply chain challenges on product safety risks and corrective action"
12:00pm	Ben Selwyn, University of Sussex	"Sustainability: a systemic perspective – how the world economy impacts on sustainability objectives and implementation"
12:45pm		Lunch (8th floor)
1:30pm	Mathew Hussey, Gallagher	"Environmental insurance – how insurance adapts to emerging risks"
2:15pm	Tomas Sys and Eleanor Hinde, Ramboll	"ESG - trends on requirements for due diligence on supply chains and reporting"
3:00pm		Refreshment break
3:15pm	Anita Lloyd, Squire Patton Boggs	"Risks associated with communication of 'green' credentials"
3:45pm	Nicola Smith, Squire Patton Boggs	"Navigating potential regulatory divergence in the UK and Europe"
4:15pm	Rob Elvin, Squire Patton Boggs	Final thoughts and Q&A
4:30pm		Close

SQUIRE PATTON BOGGS

Creating psychological safety: manager wellbeing training

Heather Beach – Healthy Work Company
9:30am – 10:15am

Heather Beach

Student of:
Positive Psychology

Relational Organisational Gestalt

BS 45001 Lead implementor

CIM Diploma, CAM Diploma, Cranfield Strategy; Cranfield Culture

Ex director of Barbour and UBM

30 years in Health and Safety – SilverPlatter, Barbour, IOSH conference, Safety and Health Expo, SHP

Founder of Healthy Work Co

Founder of Women in HS

Key influencer in H&S 2018-2020

Psychological safety

Link to Just Culture

In the absence of psychological safety, people will **hesitate to speak up** when they have questions or concerns related to safety. This can lead to **under reporting of incidents**, to poor quality of investigation reports, and to poor underlying factor analysis (it is easier to point the finger at faulty equipment than at a poor decision made by the unit's manager). It can hinder organisational learning. [Edmondson 2018]

Wellbeing at work

SQUIRE PATTON BOGGS

2016-2023

- Cycle to work/yoga/ fruit
- MHFA
- Covid specific interventions - managing stress/ wellbeing days
- Manager training/SMT training
- ISO 45003 Wellbeing risk assessment/ sustainable cultural approach

Physical health

Mental illness destigmatisation

Business focused wellbeing

What problem were we trying to solve with our wellbeing initiatives to date?

SQUIRE PATTON BOGGS

What problem were we trying to solve?

- ✓ If it was destigmatising conversations about having mental health issues, then we are seeing some success
- ✓ If it was raising awareness about mental ill health and how to self manage, then we are having some success

If it was reducing sickness absence, staff retention, staff engagement, safety improvements then we are probably failing

Are we winning at organisational wellbeing in the UK?

- "Britain is sick. The number of people claiming disability benefits has doubled in a year. Working-age deaths (that did not involve Covid-19) are on the rise. As Andy Haldane, former chief economist of the Bank of England, put it in a speech recently: "**For the first time, probably since the Industrial Revolution . . . health and wellbeing are in retreat**"
- ….while work has become less physically dangerous, **it seems to have become more psychologically dangerous**. Work-related stress, depression and anxiety began to rise about a decade ago. **This surged during the pandemic and now accounts for half of all work-related illness**."

Global Gallup survey 2022

- Whether employees are stressed because of work, or their stress is carrying over into work, one thing is clear: The world's employees are feeling even more stressed than they did in 2020 (the previous all-time high).
  - Both Europe and South Asia (which includes India) dropped five percentage points in wellbeing 2021, with South Asia having the lowest wellbeing in the world at 11%.
  - Workers in these regions not only felt like their current life was worse than it had previously been, their hope in the future also dropped.
  - While almost half of the world's workers felt the burden of stress, working women in the U.S. and Canada region were among the most stressed employees globally.

Key issues: stress at work

SQUIRE PATTON BOGGS

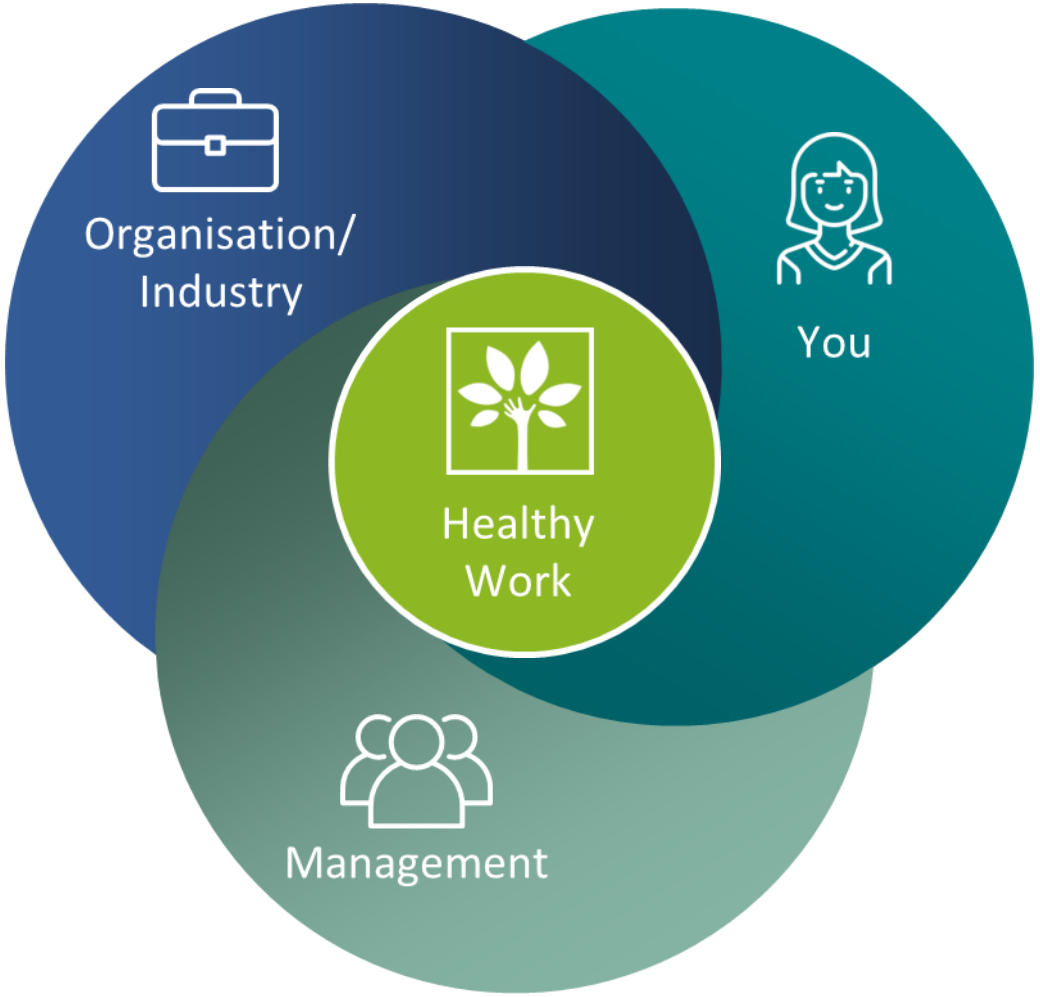
1. The intensification of work: job demands
2. There has also been a drop in the level of control people have over how they work, particularly among lower-paid workers
3. Combination of high demands and low control at work — known as "job strain" — is bad for mental and physical health
4. Line managers inconsistent when it comes to people skills
5. Mechanisms that could protect workers from these trends — the "protective shield",— are particularly weak in certain countries

What is workplace wellbeing?

"Workplace Wellbeing relates to all aspects of working life, from the quality and safety of the physical environment, to how workers feel about their work, their working environment, the climate at work and work organisation."

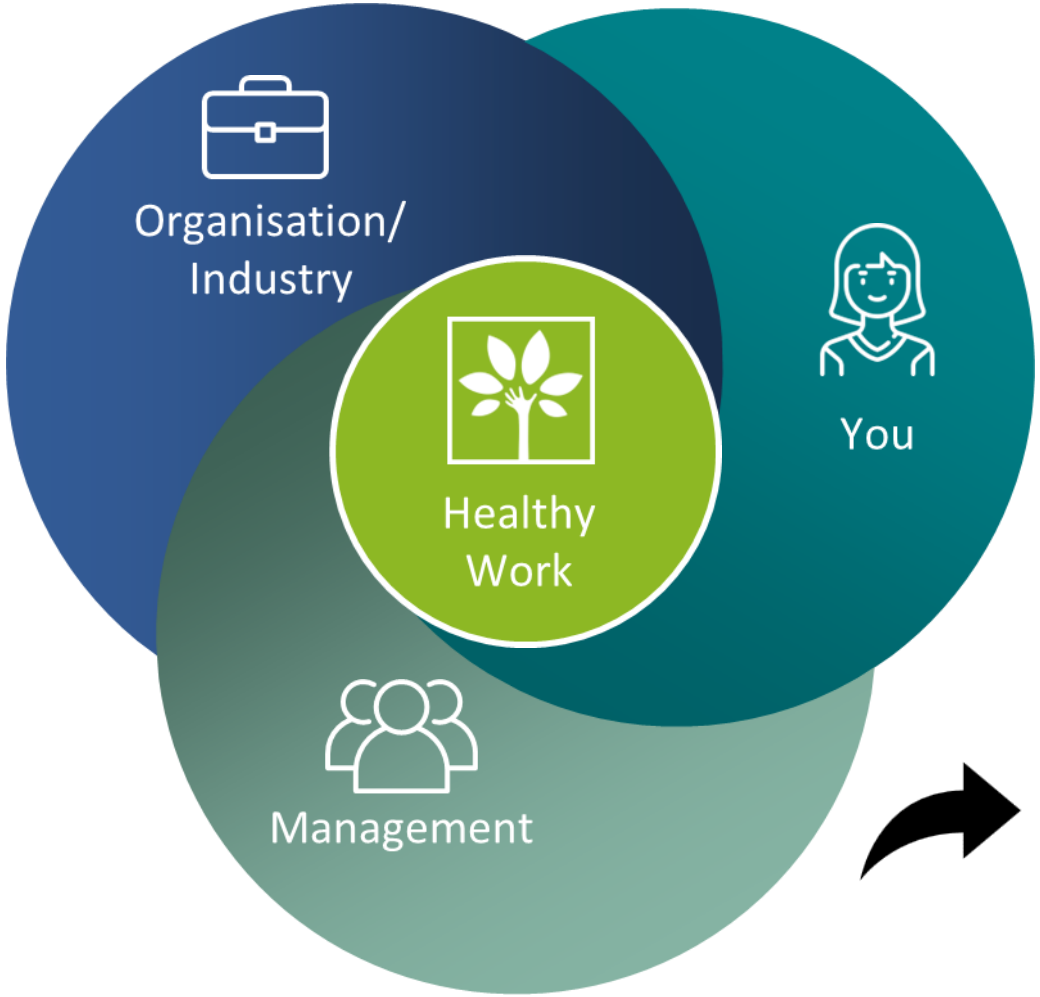
"The aim of measures for workplace well-being is to complement OSH measures to make sure workers are safe, healthy, satisfied and engaged at work."

International Labour Organization



Creating the conditions for thriving

Job demands
Control
Support
Change
Job design
Inclusivity
Fair and timely pay
Culture



My personal life
My self awareness
and mindset

Manager self awareness,
education and mindset
Level of empathy
Tools and education Culture
set by the leadership

Why does psychological safety matter in the context of wellbeing?

Impact of mental health on safety

- "Poor mental health can lead to impaired concentration, reduced situational awareness, and increased distraction, all of which can increase the risk of accidents and injuries in the workplace."

  Institute for Employment Studies

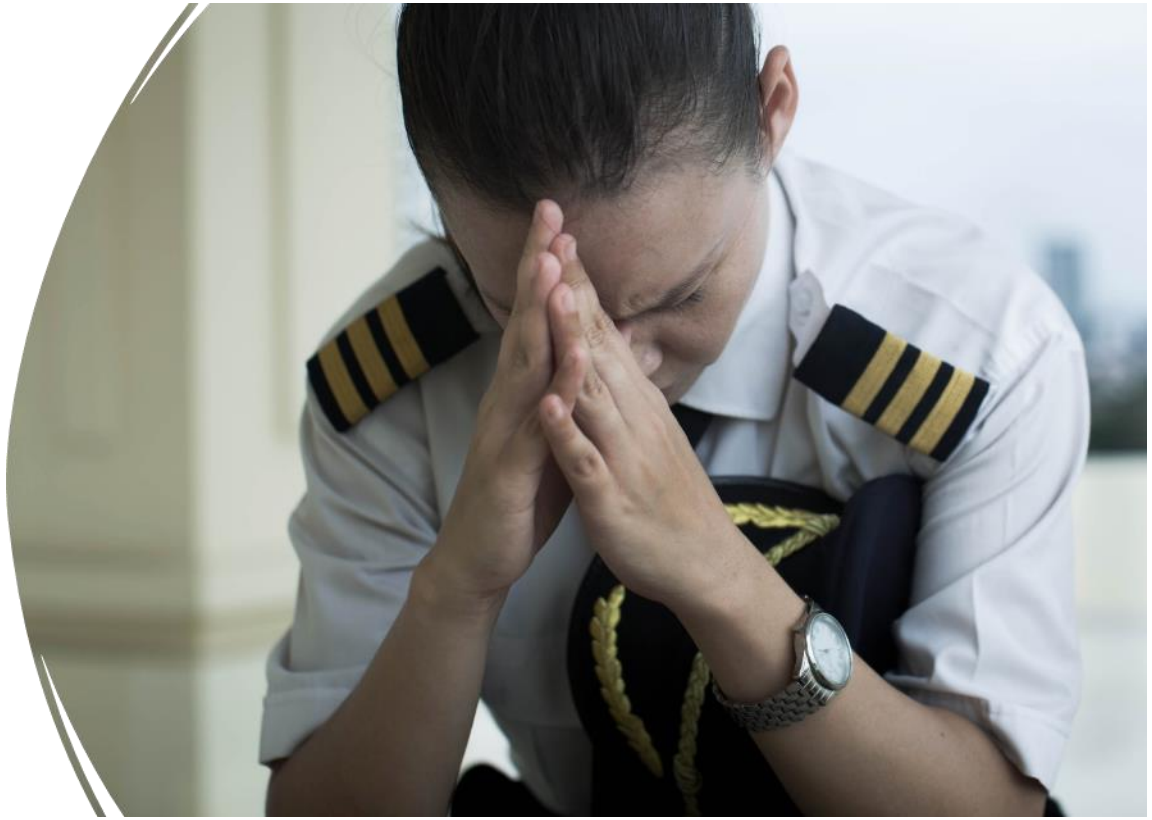
Impact of mental health on safety: Keil Centre

In 2006 the Keil Centre examined the link between psychological ill health, anxiety, depression and safety and concluded (as we all intuitively know) that all can interfere with an individual's performance.

Impact of mental health on safety: airlines

- Netherlands 2013: Pilot mental disorders were believed to have played a part in 17 accidents and incidents over the past 35 years, including nine fatal accidents that resulted in 576 deaths.

- The fatal accidents were related primarily to the pilot’s difficulty coping with "negative life events" such as relationship problems, legal problems and work-related stress



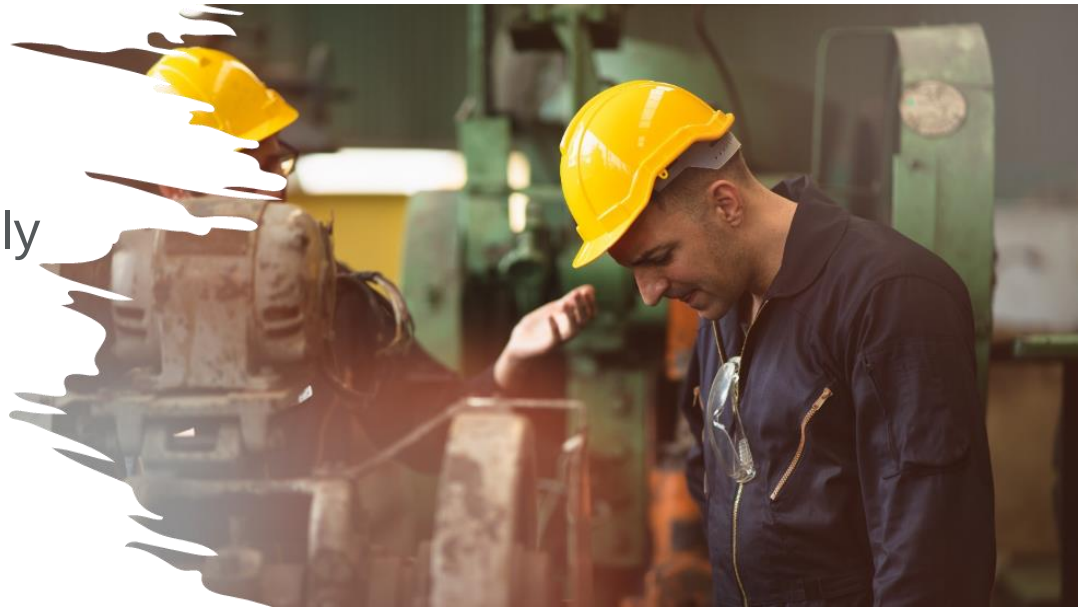
Manager impact?

- Journal of Leadership & Organizational Studies, analysis of 53 studies - leadership style has a huge impact on employee mental health
- Bad is stronger than good! A truly awful boss is far more detrimental than an inspirational leader can be beneficial
- Managers have just as much of an impact on people's mental health as their spouse (both 69%) — and even more of an impact than their doctor (51%) or therapist (41%)
- Gallup studies show 70% of staff engagement is down to the manager

Managers and supervisors are not trained…

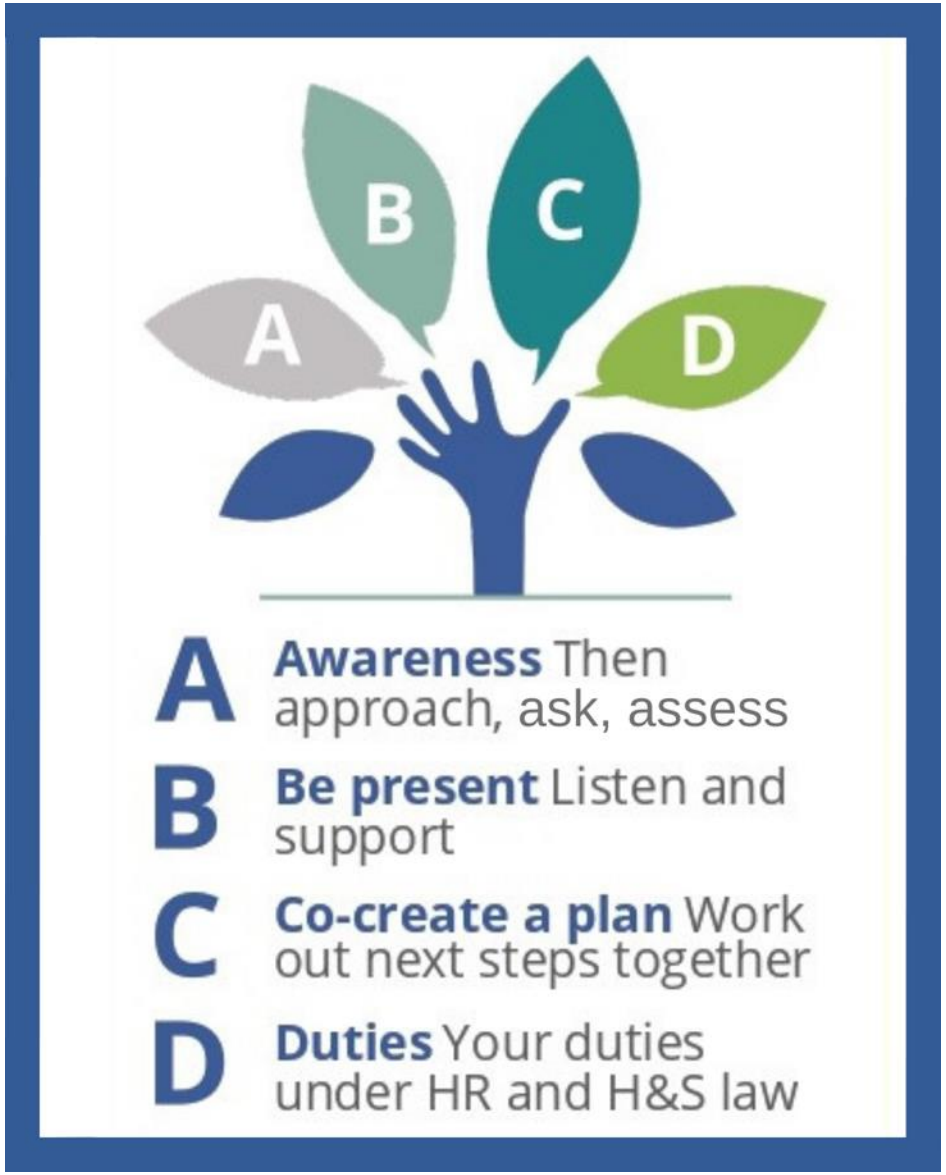
- UK: Nearly two-thirds (65%) of managers don't receive regular management training from their employers (26% haven't even had any management training)

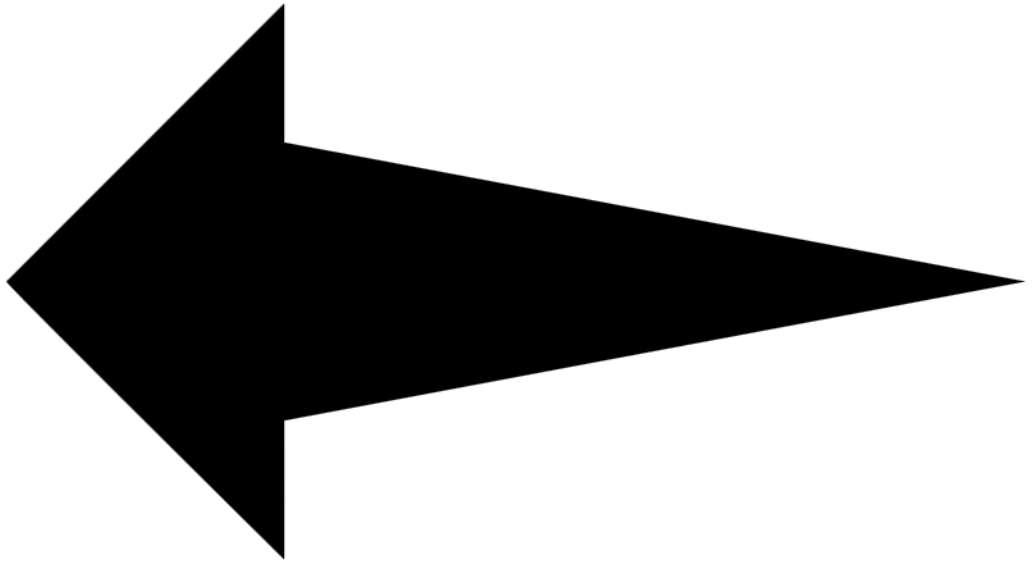
- The U.S. Bureau of Labour statistics found that companies with fewer than 100 employees gave only 12 minutes of manager training every six months. Organisations with 100-500 employees provided just six minutes



Enabling people managers to have conversations to create safe and healthy environments

- Being intrusive
- Saying the wrong thing
- Making the situation worse
- Emotions – other people's and theirs!
- …landing in a tribunal





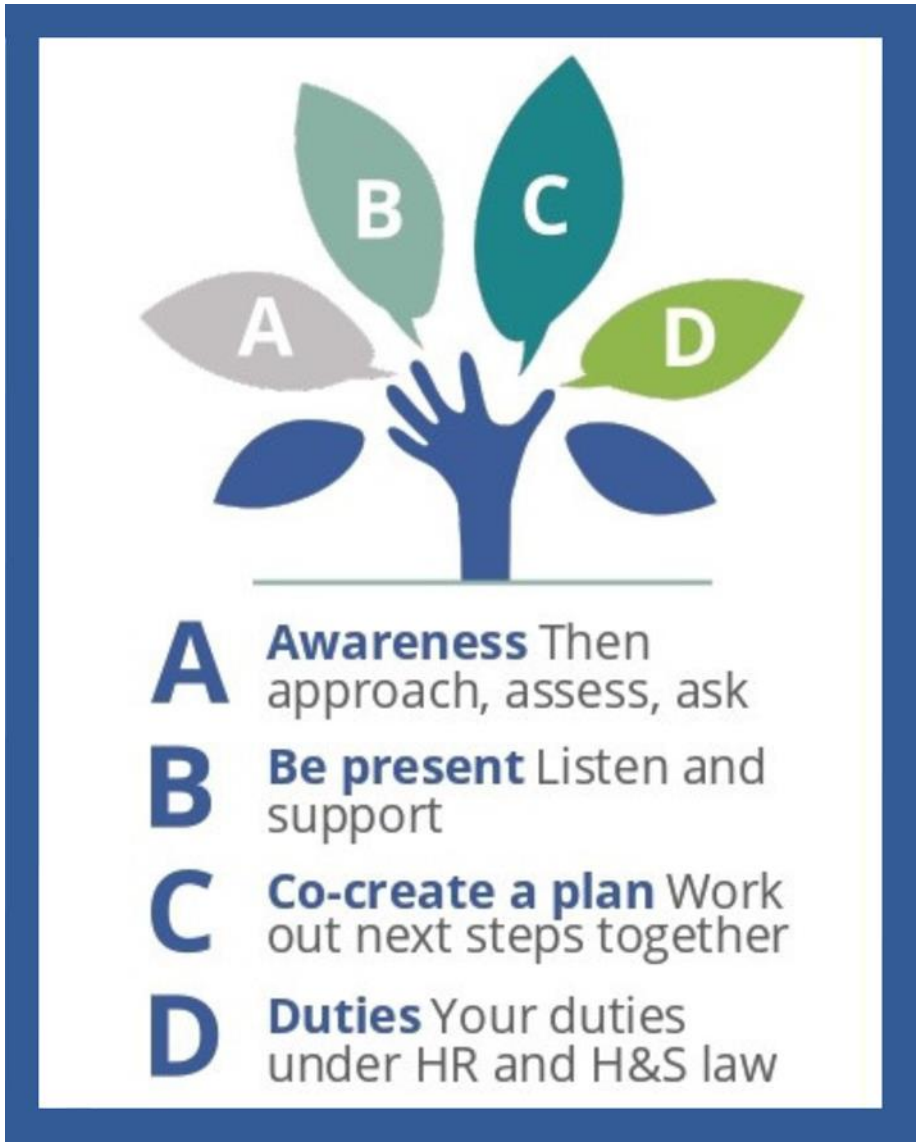
Spotting signs of someone struggling
Better listening and signposting skills
Following up and reasonable adjustments

Tools we can use to support powerful listening

- Use body language
- Comfortable eye contact
- Summarise using their words
- Use silence
- Ask clarifying/open questions

People need their issue acknowledged and understood before they can move to a solution

Case studies: forum theatre



- Feedback average 4.3 out of 5
- 98% would recommend to a colleague
- Conversations about wellbeing increase
- Anecdotal - having conversations they haven't had before with their workforce and at home

Is it right for you?

- heather@healthy-working.com
- + 44 (0) 7825 832565
- www.healthyworkcompany.com
- Senior manager training
- Manager training

SQUIRE PATTON BOGGS

Incorporating intelligence to keep risk management models relevant

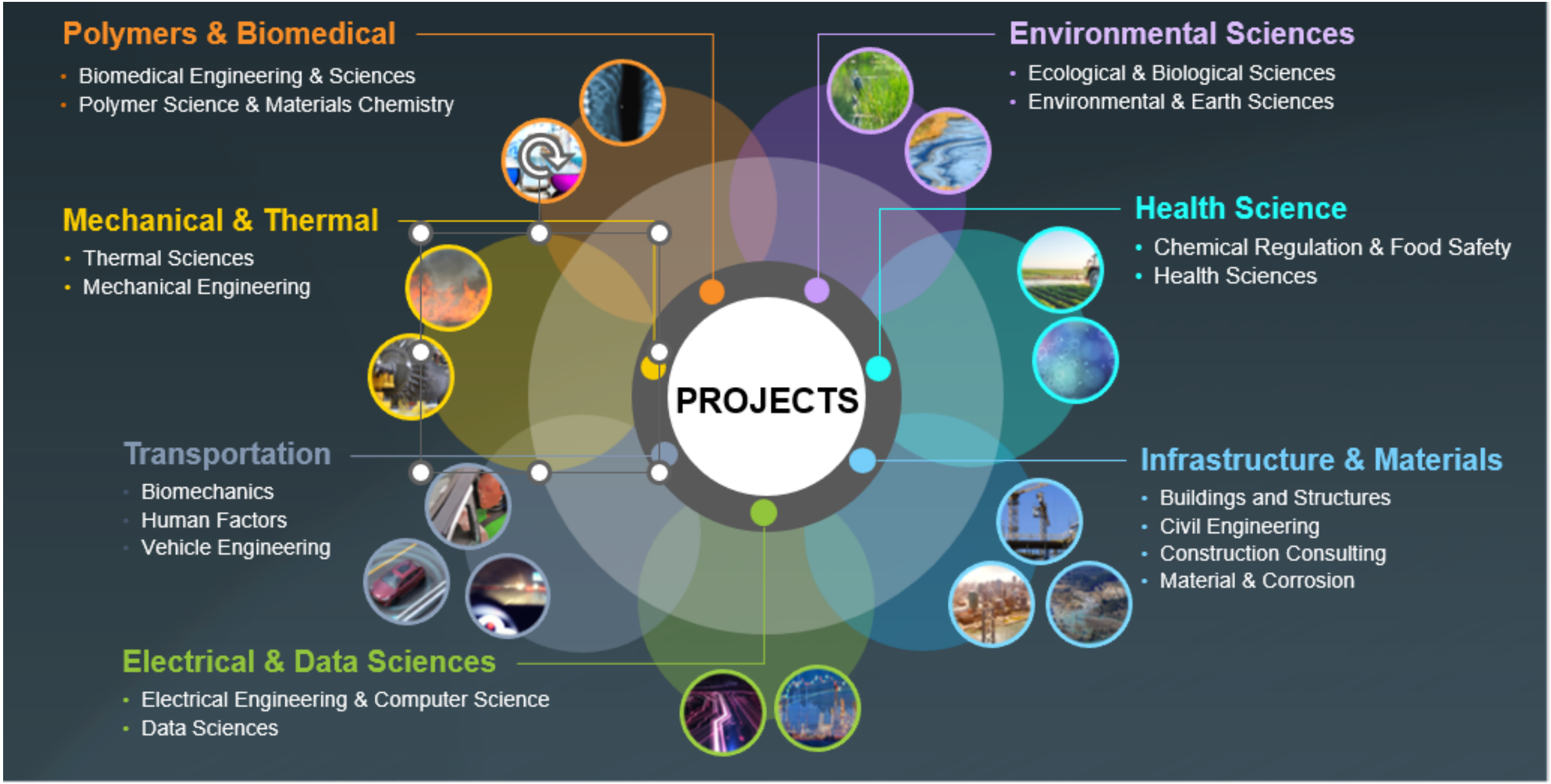
Rachel Ward PhD FIFST – Exponent
10:15am – 11:00am

Exponent

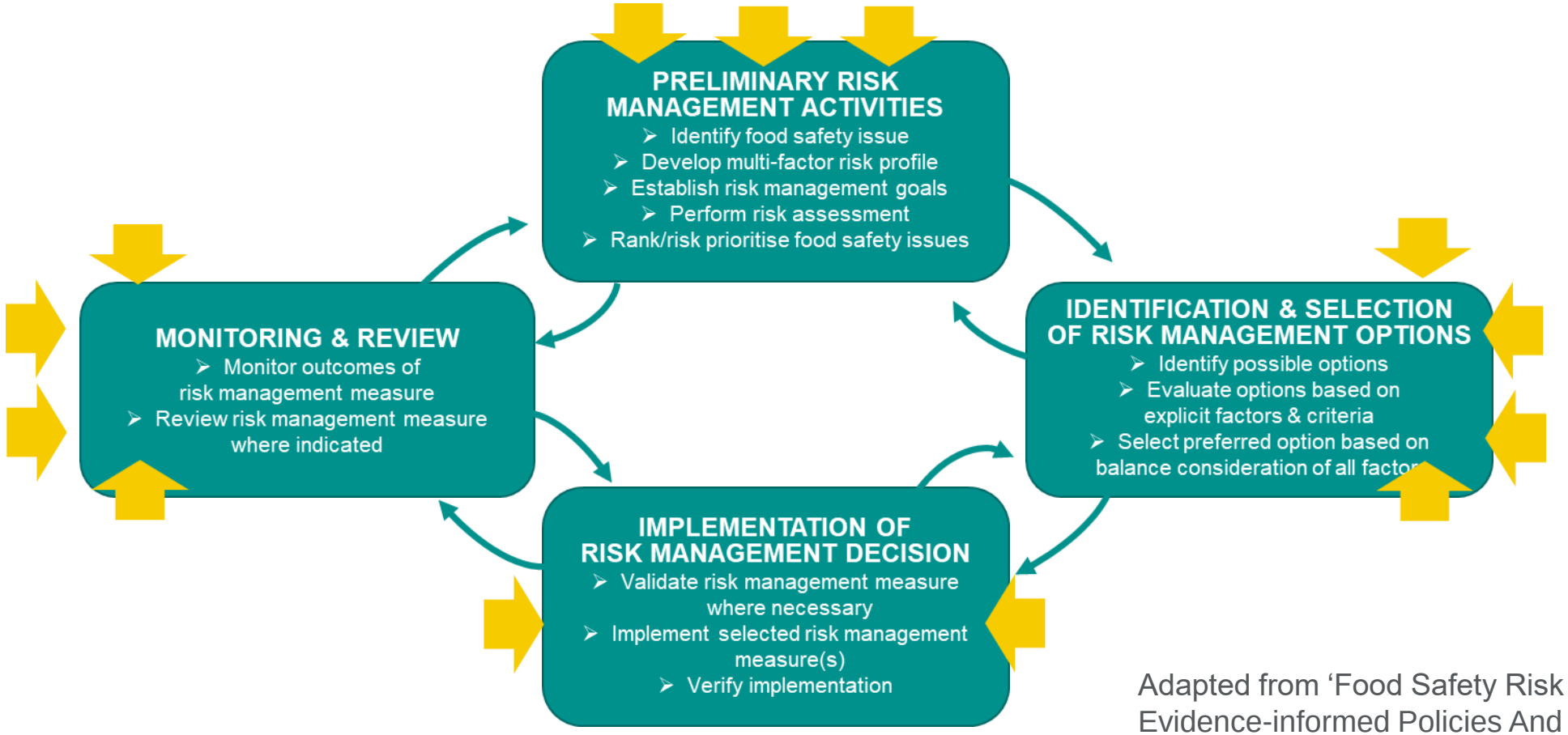
- Exponent is a multi-disciplinary engineering and scientific consulting firm that brings together more than 90 different disciplines to solve important engineering, science, regulatory and business issues facing our clients

Chemical Regulation and Food Safety

- Technical and regulatory consultancy covering chemical contaminants, food contact materials, novel foods, REACH, consumer products, cosmetics and lots more…


Polymers & Biomedical
• Biomedical Engineering & Sciences
• Polymer Science & Materials Chemistry
Environmental Sciences
• Ecological & Biological Sciences
• Environmental & Earth Sciences
Mechanical & Thermal
• Thermal Sciences
• Mechanical Engineering
Health Science
• Chemical Regulation & Food Safety
• Health Sciences
PROJECTS
Transportation
• Biomechanics
• Human Factors
• Vehicle Engineering
Infrastructure & Materials
• Buildings and Structures
• Civil Engineering
• Construction Consulting
• Material & Corrosion
Electrical & Data Sciences
• Electrical Engineering & Computer Science
• Data Sciences

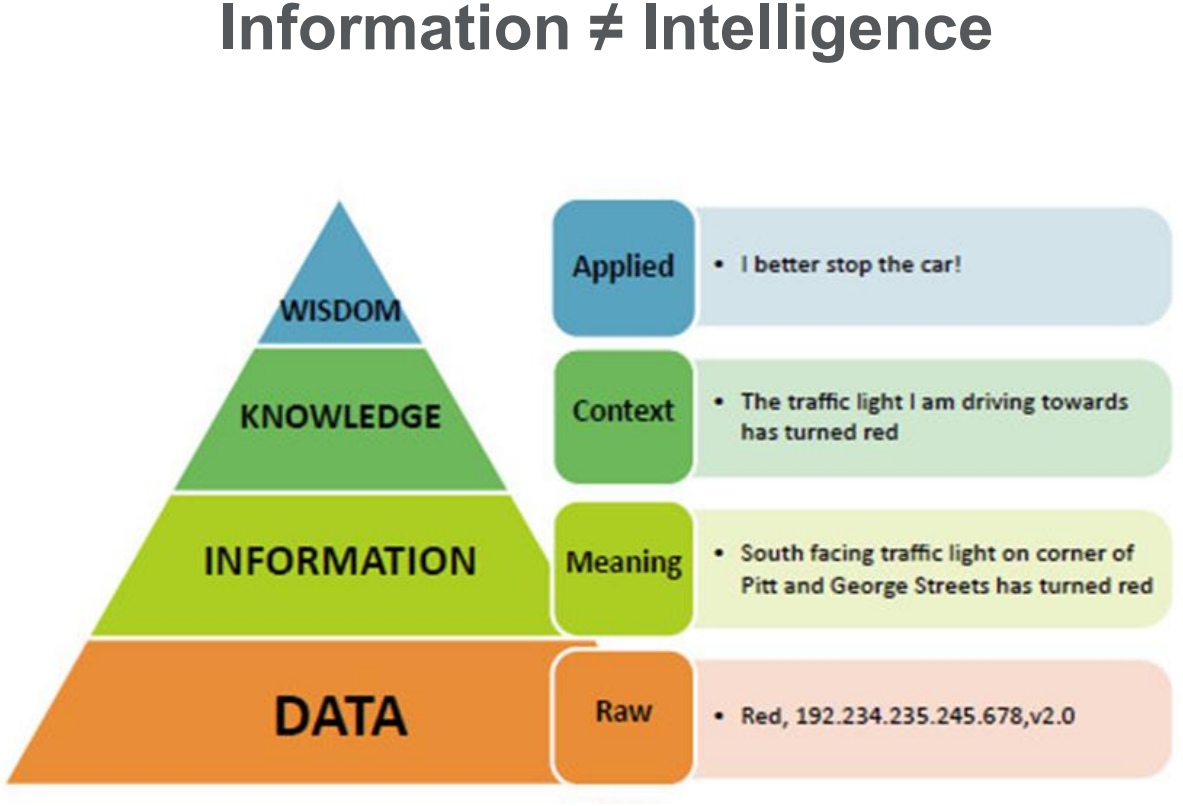
Food Risk Management Framework



Adapted from 'Food Safety Risk Management. Evidence-informed Policies And Decisions, Considering Multiple Factors.' FAO Guidance Materials. Rome, 2017

Intelligence gathering

- Intelligence gathering: Process of collecting **information** on threats and using that information to drive risk assessment and support risk protection.
- **Intelligence** is a product of the collection, evaluation, collation, interpretation and analysis of available data and information concerning issues vital to an organisations development and execution of plans, policies, decisions and courses of action.



https://www.uscybersecurity.net/csmag/the-differences-between-data-information-and-intelligence/

Intelligence gathering – key elements

RISK IDENTIFICATION Diagnosing and collecting information on factors that could create risk.	Collect what data? From where? How? **Resources** required

Intelligence gathering – key elements

RISK IDENTIFICATION Diagnosing and collecting information on factors that could create risk.	Collect what data? From where? How? **Resources** required
RISK ASSESSMENT Gauging the likelihood that a risk might occur. It involves analysing risk probabilities and the potential consequences that might follow.	**Multi-disciplinary expert** assessment required to analyse collected data and predict consequences **Senior management engagement essential** – to understand potential consequences and overlay organisation priorities **Commitment** – resources, time, reducing risks
RISK PRIORITISATION Categorising each risk in order of importance. It involves organising risks based on their importance to the organisation.	

Intelligence gathering – key elements

RISK IDENTIFICATION Diagnosing and collecting information on factors that could create risk.	Collect what data? From where? How? **Resources** required
RISK ASSESSMENT Gauging the likelihood that a risk might occur. It involves analysing risk probabilities and the potential consequences that might follow.	**Multi-disciplinary expert** assessment required to analyse collected data and predict consequences **Senior management engagement essential** – to understand potential consequences and overlay organisation priorities **Commitment** – resources, time, reducing risks
RISK PRIORITISATION Categorising each risk in order of importance. It involves organising risks based on their importance to the organisation.	
RISK MITIGATION Implementing strategies that reduce the likelihood of a risk occurring. It involves implementing regulations, developing contingency plans, or transferring risk.	**Multi-disciplinary experts** required to design effective strategies **Resources** required to effectively and consistently implement them

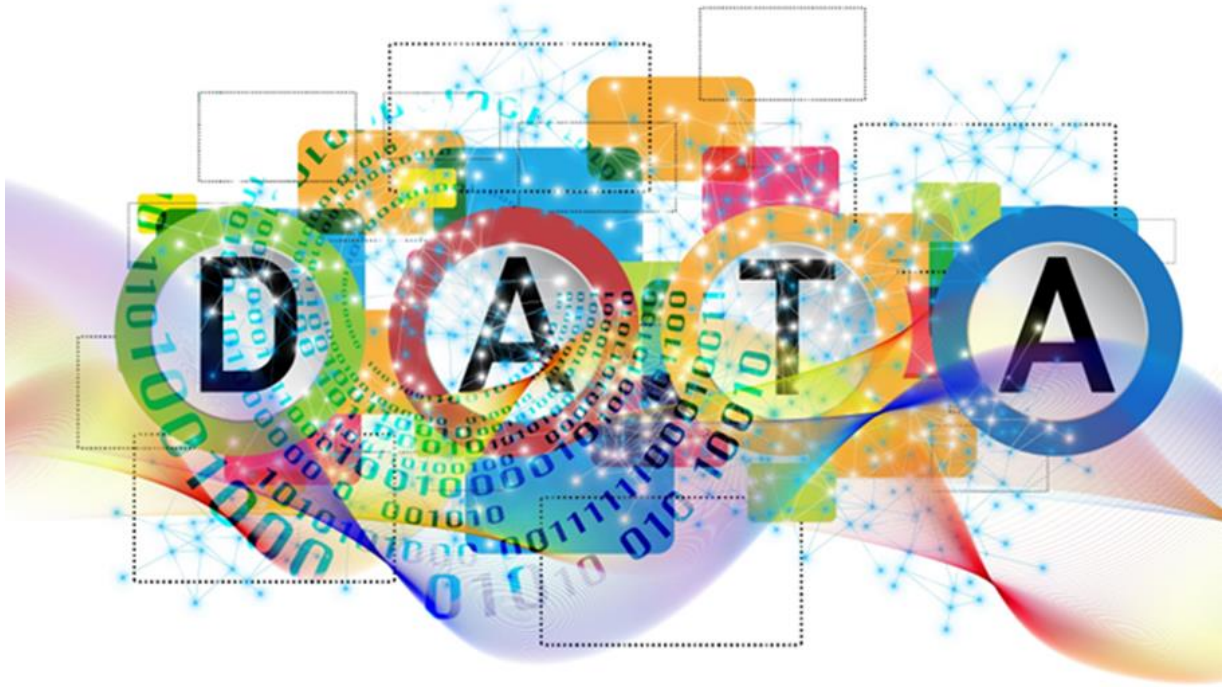
Intelligence gathering – key elements

RISK IDENTIFICATION Diagnosing and collecting information on factors that could create risk.	Collect what data? From where? How? **Resources** required
RISK ASSESSMENT Gauging the likelihood that a risk might occur. It involves analysing risk probabilities and the potential consequences that might follow.	**Multi-disciplinary expert** assessment required to analyse collected data and predict consequences **Senior management engagement essential** – to understand potential consequences and overlay organisation priorities **Commitment** – resources, time, reducing risks
RISK PRIORITISATION Categorising each risk in order of importance. It involves organising risks based on their importance to the organisation.	
RISK MITIGATION Implementing strategies that reduce the likelihood of a risk occurring. It involves implementing regulations, developing contingency plans, or transferring risk.	**Multi-disciplinary experts** required to design effective strategies **Resources** required to effectively and consistently implement them
RISK MONITORING Reviewing the effectiveness of risk management activities. It involves tracking risk indicators and evaluating the overall risk management process.	**Resources** required to monitor and confirm effectiveness – and provide inputs for review and re-assessment

Intelligence gathering – key elements

RISK IDENTIFICATION Diagnosing and collecting information on factors that could create risk.	Collect what data? From where? How? **Resources** required
RISK ASSESSMENT Gauging the likelihood that a risk might occur. It involves analysing risk probabilities and the potential consequences that might follow.	**Multi-disciplinary expert** assessment required to analyse collected data and predict consequences **Senior management engagement essential** – to understand potential consequences and overlay organisation priorities **Commitment** – resources, time, reducing risks
RISK PRIORITISATION Categorising each risk in order of importance. It involves organising risks based on their importance to the organisation.	
RISK MITIGATION Implementing strategies that reduce the likelihood of a risk occurring. It involves implementing regulations, developing contingency plans, or transferring risk.	**Multi-disciplinary experts** required to design effective strategies **Resources** required to effectively and consistently implement them
RISK MONITORING Reviewing the effectiveness of risk management activities. It involves tracking risk indicators and evaluating the overall risk management process.	**Resources** required to monitor and confirm effectiveness – and provide inputs for review and re-assessment
RISK COMMUNICATION Sharing information about risks with company stakeholders. It involves outlining risks and management strategies for investors, executives, and other interested parties.	**Communication needed at all stages** No buy-in or agreement, conflicting priorities **erode risk mitigation efforts**

Information ‘overload’

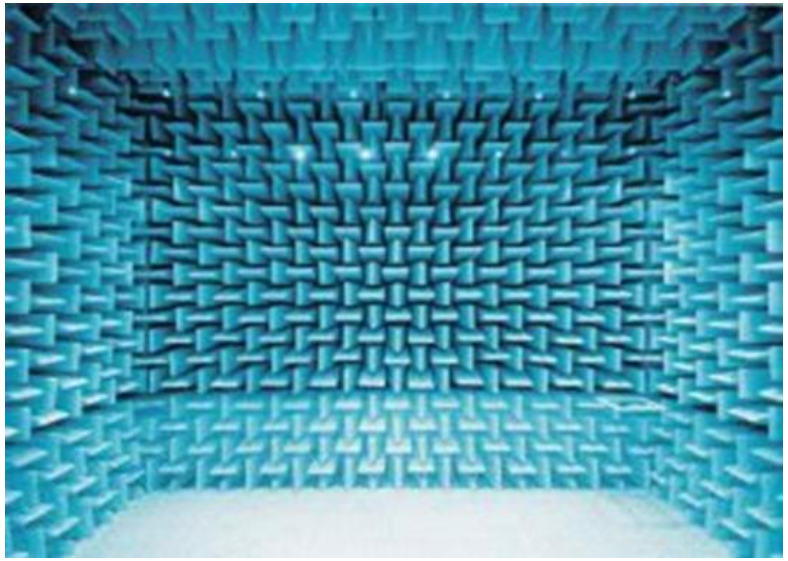


- Excess information can result in poorer decision making
- Circular reporting effects - same information arises from different reporting sources
- Analysts can over-assign importance / credibility to repeat reported information creating circular reporting
  - Analysts often measure the credibility of intelligence reporting in part based on how many independent sources confirm the report
  - Problematic if one source appears to multiply through circular reporting
- Complexity of intelligence gathering frameworks can overwhelm efforts

Young, 2013 Too Much Information Ineffective Intelligence Collection
https://hir.harvard.edu/too-much-information/
Melinat et al 2014 Information Overload: A Systematic Literature Review DOI: 10.13140/2.1.4293.7606
Perspectives in Business Informatics Research Conference, Lund, Sweden

‘Echo chambers’

- **Closed** information environment
- Specific voices are actively excluded & discredited
- **Isolated** from opposing views
- Risk of confirmation / affirmation **bias**
- Amplified by ‘**filter bubbles**’



Villa, G., Pasi, G., & Viviani, M. (2021). Echo chamber detection and analysis: A topology- and content-based approach in the COVID-19 scenario. Social network analysis and mining, 11(1), 78. https://doi.org/10.1007/s13278-021-00779-3
Jasny L, Dewey AM, Robertson AG, Yagatich W, Dubin AH, Waggle JMCartney, et al. (2018) Shifting echo chambers in US climate policy networks. PLoS ONE 13(9): e0203463. https://doi.org/10.1371/journal.pone.0203463

Unintended consequences

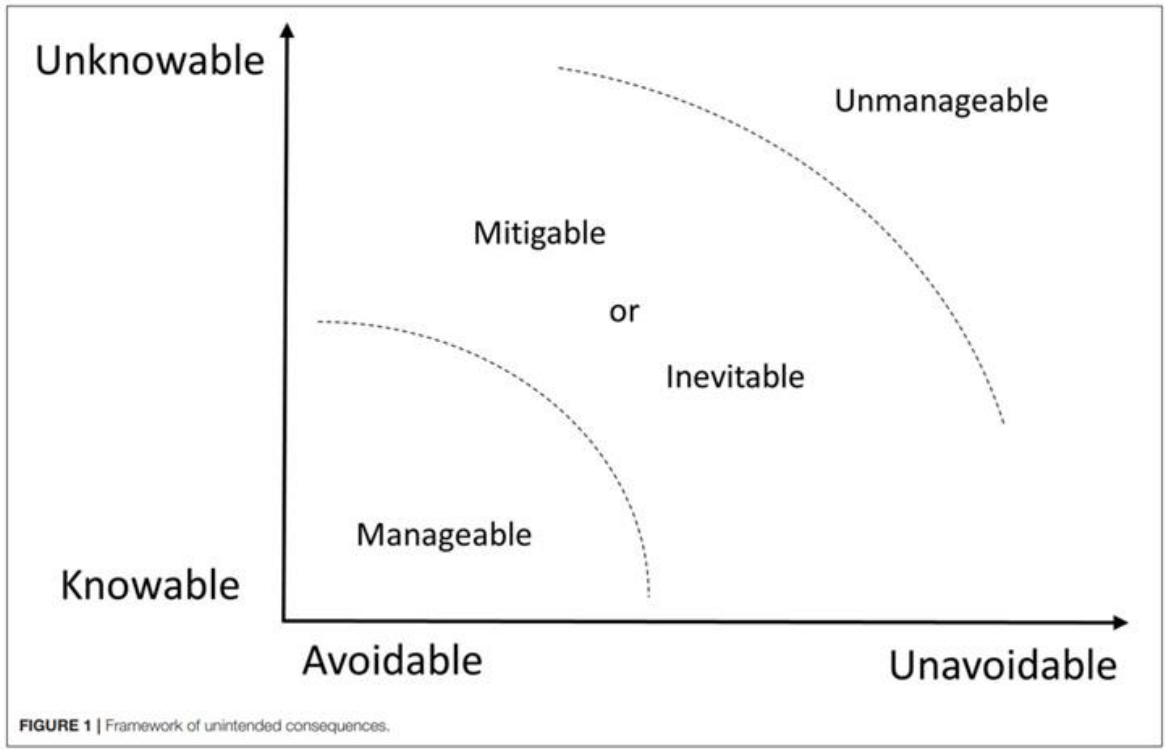


FIGURE 1 | Framework of unintended consequences.

Suckling J, Hoolohan C, Soutar I and Druckman A (2021) Unintended Consequences: Unknowable and Unavoidable, or Knowable and Unforgivable? Front. Clim. 3:737929. doi: 10.3389/fclim.2021.737929

- Framework for categorising unwanted unintended consequences
- Based upon level of knowledge and scope for avoidance
- The framework comprises four categories:
  - Knowable and Avoidable
  - Knowable and Unavoidable
  - Unknowable and Avoidable
  - Unknowable and Unavoidable

How to avoid unintended consequences?

- A priori assessments of potential unintended consequences of policies, product and process design,
- performed by multidisciplinary teams with as broad a range of expertise as possible,
- within pragmatic specified boundaries – recognising potential omission of relevant areas.

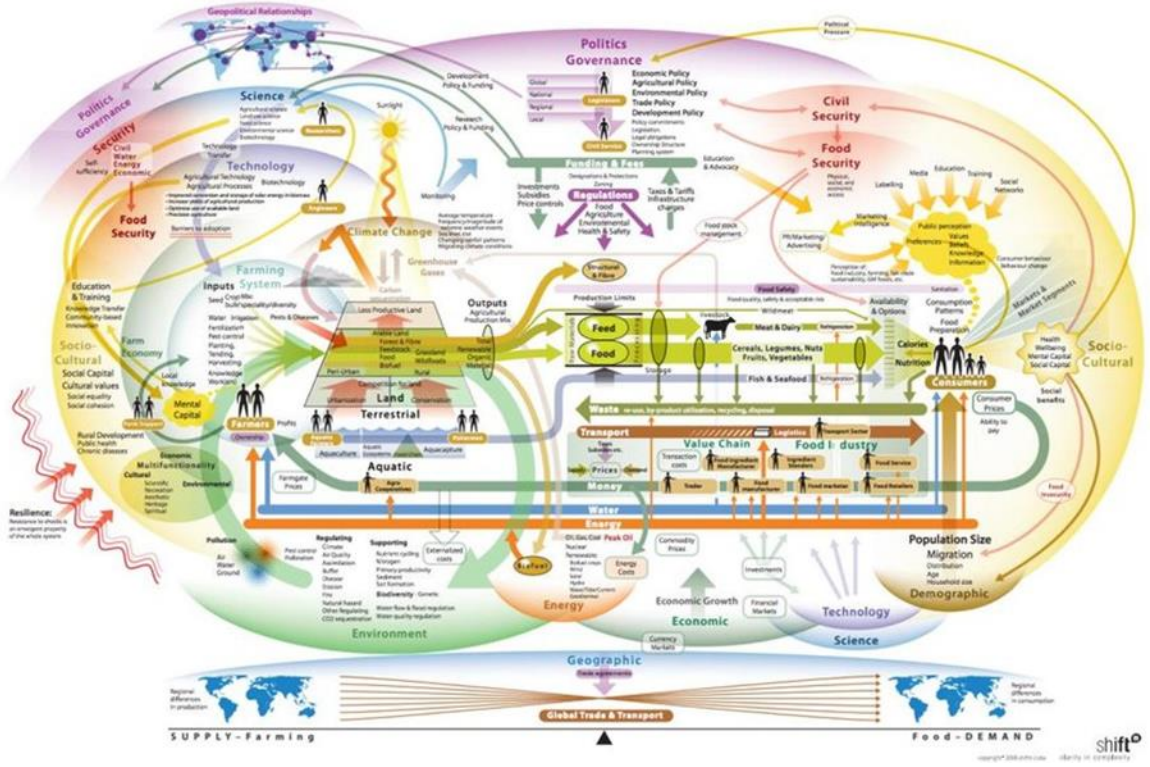
- Plans made in light of the assessment should be iterative,
- with scheduled re-assessments/reviews in the future.

- Unintended consequences identified should be placed in the framework with as much consensus among decision-makers as possible

- A lack of consensus can highlight a need to seek more diverse expertise or for further research, or for fragmenting of the issue into smaller, more readily assessable pieces

Our food system

- Global
- Complex AND complicated
- Interdependent
- Susceptible to shock:
  - Extreme climate events
  - Socio-economic change
  - Geopolitical events
- **How to predict risks to manage them, avoid disruption and assure food security?**



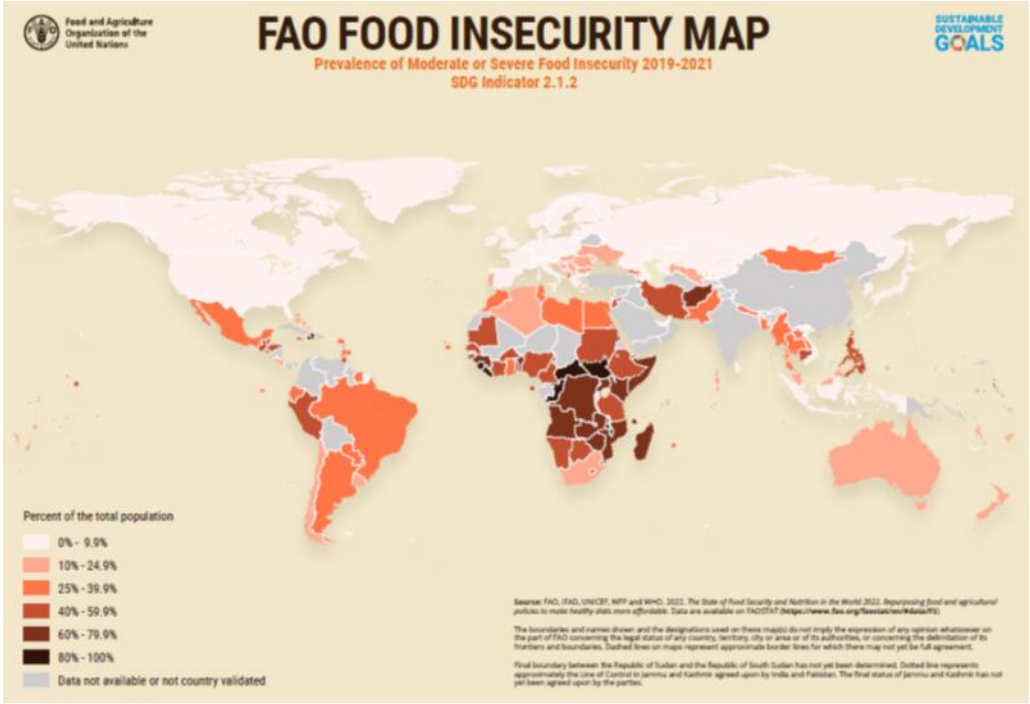
Global food security

Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.

World Food Summit, 1996

Global food security

- Requires all four dimensions below to be fulfilled simultaneously:
  - Physical availability of food
  - Economic and physical access to food
  - Food utilisation
  - Stability of the other three dimensions over time
- Food insecurity drives risk
  - Quality is reduced
  - Food safety controls pressurised
  - Potential for adulteration / fraud
  - Domestic market prioritised



https://www.fao.org/fileadmin/templates/SOFI/2022/docs/map-fies-print.pdf

https://www.fao.org/3/al936e/al936e00.pdf

Emerging issues in food systems

- Food production is a major contributor to **greenhouse gas emissions** as well as **water scarcity** and **wider biodiversity issues**
  - Unsustainable food production threatens food security, for example from over-fishing, soil erosion or water shortages
- Food production will increasingly be **impacted by climate change**, in particular from the increased frequency of storms, droughts and other extreme weather events
- **Overconsumption and waste** further exacerbate the situation
  - Placing unnecessary pressure on the food system
  - Increasing public health pressures - rising obesity rates; diet-related illness

Global drivers & trends impacting future food safety

- **Climate change** disrupting agri-food production capabilities
- **Shifting consumer behaviours** driving changes in food purchasing and consumption habits
- **New food sources and food production systems** developing to achieving improved environmental sustainability and/or nutritional benefits
- **Urban farms** of varying scales, commercial and non-commercial
- **New technologies** e.g. nanotechnology and new food production methods e.g. 3D printing
- **Food packaging evolution**
- **Technological innovations** e.g. contaminants detection, outbreak investigation analysis, predictive analytics for risk identification, traceability tools
- **Application of automation and digital systems** e.g. Artificial Intelligence, big data, and Blockchain technology
- **Human gut microbiome** changes and possible consequences to the human health
- **Antimicrobial resistance** (AMR) – possible transfer to gut microbiome; increase of AMR impacting human/animal health
- **Circular economy** to address concerns about environmental sustainability, depletion of natural resources
- **Food fraud** ever-increasing instances arising; new regulatory strategies to address food fraud and retain trust in agrifood systems

FAO. 2022. Thinking about the future of food safety – A foresight report. Rome. https://doi.org/10.4060/cb8667en

Emerging risks in UK food system

Key drivers and impacts

- UK economic condition
  - Supply chain volatility and disruption
  - Household food insecurity
  - Labour shortages in the food system
- Consumer attitudes
  - Increased volatility of consumer decision-making
- Climate change /environmental factors
  - Increased animal and plant pests
- Technology Innovation
  - Improved agricultural production technologies
  - Digital technologies, AI, and robotics
  - Alternative sources of protein
  - Novel food processing technologies
  - Gene editing / precision breeding technologies
  - Insects in food and feed
  - Improved packaging / alternatives to single use plastic
- Brexit and regulatory change
  - Enforcement issues at the border linked to new import controls
  - New trade agreements and their potential impact on the UK food system
  - Regulatory divergence
- Commercial drivers
  - Decreased investment in technology innovation
  - Decreased investment in food safety and quality assurance
  - Energy costs

UK FSA Food System Strategic Assessment 2023 https://www.food.gov.uk/print/pdf/node/17676
Assessment based upon inputs from literature review and pool of experts with range of expertise across the food system

Emerging risks in UK food system

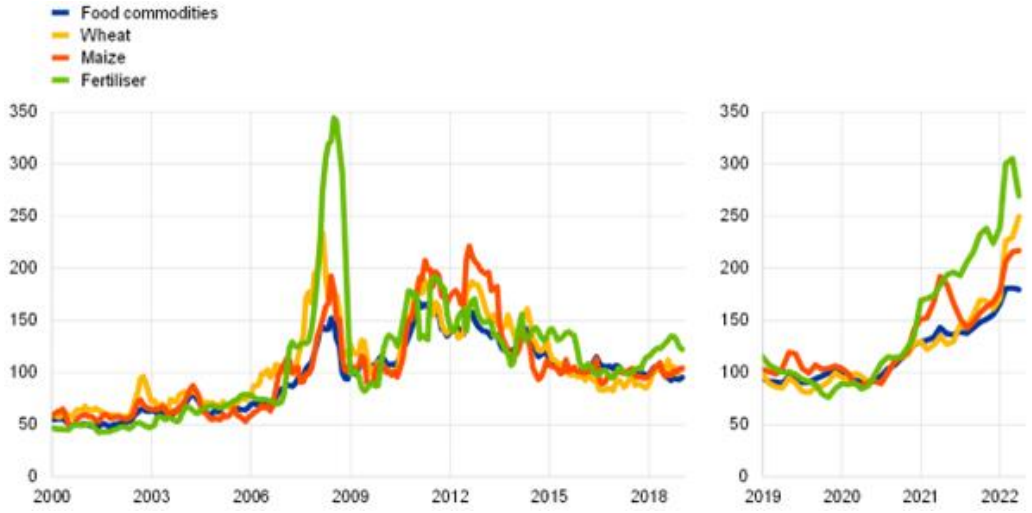
Key drivers and impacts

- UK economic condition
  - Supply chain volatility and disruption
  - Household food insecurity
  - Labour shortages in the food system
- Consumer attitudes
  - Increased volatility of consumer decision-making
- Climate change /environmental factors
  - Increased animal and plant pests
- Technology Innovation
  - Improved agricultural production technologies
  - Digital technologies, AI, and robotics
  - Alternative sources of protein
  - Novel food processing technologies
  - Gene editing / precision breeding technologies
  - Insects in food and feed
  - Improved packaging / alternatives to single use plastic
- Brexit and regulatory change
  - Enforcement issues at the border linked to new import controls
  - New trade agreements and their potential impact on the UK food system
  - Regulatory divergence
- Commercial drivers
  - Decreased investment in technology innovation
  - Decreased investment in food safety and quality assurance
  - Energy costs

UK FSA Food System Strategic Assessment 2023 https://www.food.gov.uk/print/pdf/node/17676
Assessment based upon inputs from literature review and pool of experts with range of expertise across the food system

Ukraine war – food insecurity consequences

- Russia & Ukraine account for **~30% global wheat barley and 62% of sunflower oil global exports**
- Russia & Belarus account for **~20% of global fertilizer exports**
- Middle East and North African countries most impacted
- Driving food prices up
- Significant disruption
- Continued supply chain uncertainty



Sources: Hamburg Institute of International Economics (HWWI), Refinitiv and World Bank.

Notes: Latest observation: May 2022. Food commodities include cocoa, coffee, maize, soybean and wheat. Fertiliser prices refer to diammonium phosphate fertiliser.

Ukraine war – food insecurity consequences

- **Food industry pivoting** to other sources – but supply issues arising elsewhere too!
- **Indonesia** accounts for ~60% of global palm oil supply, ~20% of total vegetable oil supply
  - Briefly stopped palm oil exports late April 2022
  - Announced in February 2023 that suspending some export permits to secure domestic supply
- **India** is the second largest global exporter of wheat
  - Indian wheat reserves diminished during Covid-19 pandemic – used to feed own population
  - Temporarily suspended export of wheat May 2022 with risks of heatwave crop failure and continued Ukrainian war

Infant formula – economic adulteration in China

- **2008 – Melamine adulterated milk powder used in infant formula**
- National disaster that killed six babies and left 300,000 babies with chronic kidney dysfunction
- 22 companies involved, including state-owned dairy company Yili and Sanlu Group
- Source traced to "protein powder" supplied by local farmers who added melamine to boost milk protein levels and pass nutritional testing

- Deep distrust of domestic supply remains in China
- Half families surveyed in 2018 prefer a foreign brand for baby formula
- Bulk buying from Hong Kong by families to bring into China causing shortages
- Prices skyrocket

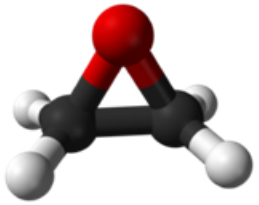
Infant formula – inadequate USA market resilience

- **Abbott Nutrition USA recall February 2022**
  - Children hospitalised due to Cronobacter spp. contamination
  - Main supplier of baby formula to many state government programmes for low income women and child
  - Some affected products are used for special medical purposes to feed vulnerable babies under medical supervision
- Consumer Confidence Shaken
  - Poor access to specialist hypoallergenic formula
  - U.S. retailers limiting purchases two to three days supply
- FDA took major action
  - Accelerated time for regulatory scrutiny to get approvals and licensing fast tracked
  - Created a new national strategy to further increase resilience of the U.S. infant formula market
  - Initiated requirements for infant formula manufacturers to develop and implement redundancy risk management plans

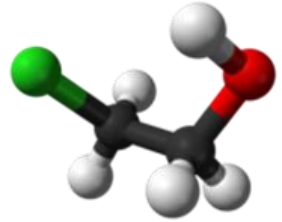
Ethylene oxide (EtO)

- Historical use of EtO as a fumigant in the food industry because of its **capability to disinfect without using heat treatment**
- EtO fumigation, irradiation, and steam treatments are the methods most commonly employed to reduce microbial populations in spices
- EtO widely used to fumigate freight containers and warehouses - risks of cross-contamination during transport and storage
- Routinely used to cold sterilise medical supplies and equipment, instruments and dressings

- Lack of regulatory harmonisation
  - Authorised fumigant in several countries including India, Canada, USA
  - Not permitted in EU/GB
  - Genotoxic carcinogen – "no safe level"
- Analytically challenging to detect ETO directly – convert to 2-chloroethanol (2-CE)



Ethylene Oxide



2-Chlorethanol

Ethylene oxide recall – unintended consequence of lack of regulatory harmonisation

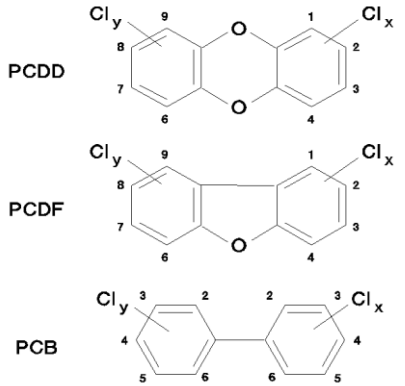
- **September 2020 – EtO first detected in sesame seeds from India** where it was used to control *Salmonella* contamination
- 2-CE detected in wide range of foods / ingredients including in products that would never be fumigated
- Difficult to tell if ETO present at all as detecting 2-CE – so is the method fit for purpose?
- **Biggest recall in EU history** with >3,000 products recalled; still ongoing in 2023
- In other countries it's not seen as an issue

Energy supply crisis / water scarcity

- Energy and utilities costs are major cost components for food production / distribution
- Many **food safety controls** dependent on adequate energy inputs
  - **Drying** of raw commodities – impact on storage, stability and safety
  - **Thermal processing** – lower temperatures / time can impact on food safety
  - Cold chain operations – ensuring maintenance of effective controls
- Drive to Net Zero – energy usage reductions driven by non-cost related aspects including government policy
- Alternative fuel sources – unintended consequences…?

Irish dioxin incident – unintended consequence of energy saving initiative

- **Gas dryer reconfigured to burn oil** – and an alternative oil source was used by feed producer
- **Oil contained waste transformer oil** – dioxins / PCBs transferred to waste bread, then fed to pigs
- December 2008 – **all Irish pork and pork products recalled for three months' production**
- Distribution of pork and pork products to >20 countries and back to Ireland
- **Cost >€200 million**



Circular economy – food system risk vulnerabilities

- Four broad macro areas where CE practices envisaged or currently used in Europe:
  - Primary production of food and feed;
  - Reducing industrial/manufacturing/processing waste;
  - Reducing food and feed waste in wholesale, food retail, catering and households; and
  - Reducing food and feed packaging waste

- Each found to present **potential to present emerging risks** to plant, animal and human health and to the environment

James, K, Millington, A, Randall, N, 2022. Food and feed safety vulnerabilities in the circular economy. EFSA Supporting Publications 2022: 19(3):EN-7226. 112 pp. doi:10.2903/sp.efsa.2022.EN-7226

Circular economy – food system risk vulnerabilities

SQUIRE PATTON BOGGS

1. Emerging risks regarding production and consumption of invertebrates

- Risks found to correlate to the type of rearing substrate
  - Antibiotic resistant genes found in substrates, larvae and insect frass
  - High levels of the heavy metals Cadmium (Cd) and Nickle (Ni) in prepupae
  - Uptake of allergens by insects from the substrate e.g. gluten
- Potential hazards reported
  - Biological - bacterial, fungal, yeasts
  - Antibiotic resistance genes found in invertebrates reared on side streams or food waste
  - Chemical - heavy metals, dioxins, PCBs, PAHs, mineral oil hydrocarbons, veterinary medicines and pesticides

Circular economy – food system risk vulnerabilities

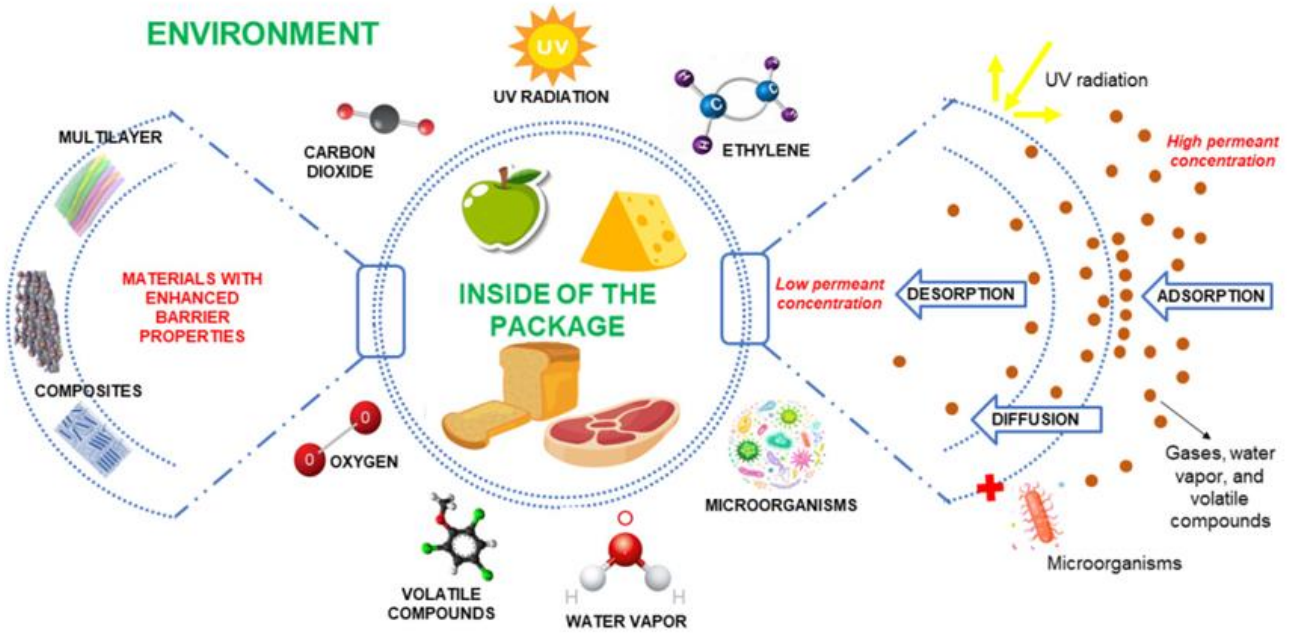
SQUIRE PATTON BOGGS

2. Emerging risks from other areas of the circular economy - under review

- **Use of organic waste streams other than feed or food**
  - Animal manures, (including insect frass), and municipal sewage as fertilisers
  - Wastewaters for irrigation
  - Livestock, crop and non-crop by-products for fertiliser
- **Alternative food contact materials** to extend shelf life of food and feeds e.g. bio-based materials
- **Recycling and reuse of existing packaging** for food and feed (e.g. refillable containers, plastic and cardboard)
- **New bio-based packaging**

Food packaging – why do we need it?

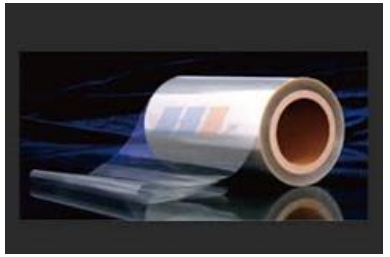
- Product Integrity
- Protection
- Stability
- Shelf-life extension
- Presentation
- Portability



Versino, F.; Ortega, F.; Monroy, Y.; Rivero, S.; López, O.V.; García, M.A. Sustainable and Bio-Based Food Packaging: A Review on Past and Current Design Innovations. Foods 2023, 12, 1057. https://doi.org/10.3390/foods12051057

Bio-based food contact materials (BBFCMs)

- **Bio-based** FCMs are derived from biologically renewable resources and produced by
  - Micro-organisms
  - Polymers directly extracted from biomass source
  - Chemical synthesis using renewable bio-based monomers
- Can be prepared from sustainable sources which are typically biodegradable or compostable



Bio-based food contact materials

SQUIRE PATTON BOGGS

Types

- Paper and board
  - Well studied but legislation is not harmonised at EU level
- Regenerated cellulose film (RCF)
  - Commission Directive 2007/42/EC relating to materials and articles made of RCF intended to come into contact with foodstuffs
- Bioplastics / biopolymers

Issues

- Bio-based materials
  - Relatively expensive and rare
  - Homogenous biomass as an ingredient source is difficult
  - Chemistry of some newer materials still evolving
- Some migration tests are not suitable for bio-based FCMs leading to misleading results
- Migration (of IAS and NIAS) should be assessed (as for all FCMs) and new and different substances are being detected and require evaluation
- Contaminants need to be assessed e.g. allergens, toxins, process contaminants

Bamboo food packaging recalls – unintended consequence of sustainability initiative

Bamboo and similar plant-based matter (rice husks, wheat straw, etc.) widely used in plastic composites to create food packaging, containers, chopping boards, lunchboxes, cutlery etc.

- Plastic FCM articles containing bamboo can suffer from accelerated degradation – releasing plastic components, with migration of formaldehyde and melamine into food or drink above their legal limit, as well as release of a range of NIAS
- Also many making false claims – "natural", "eco-friendly", "compostable", "organic"

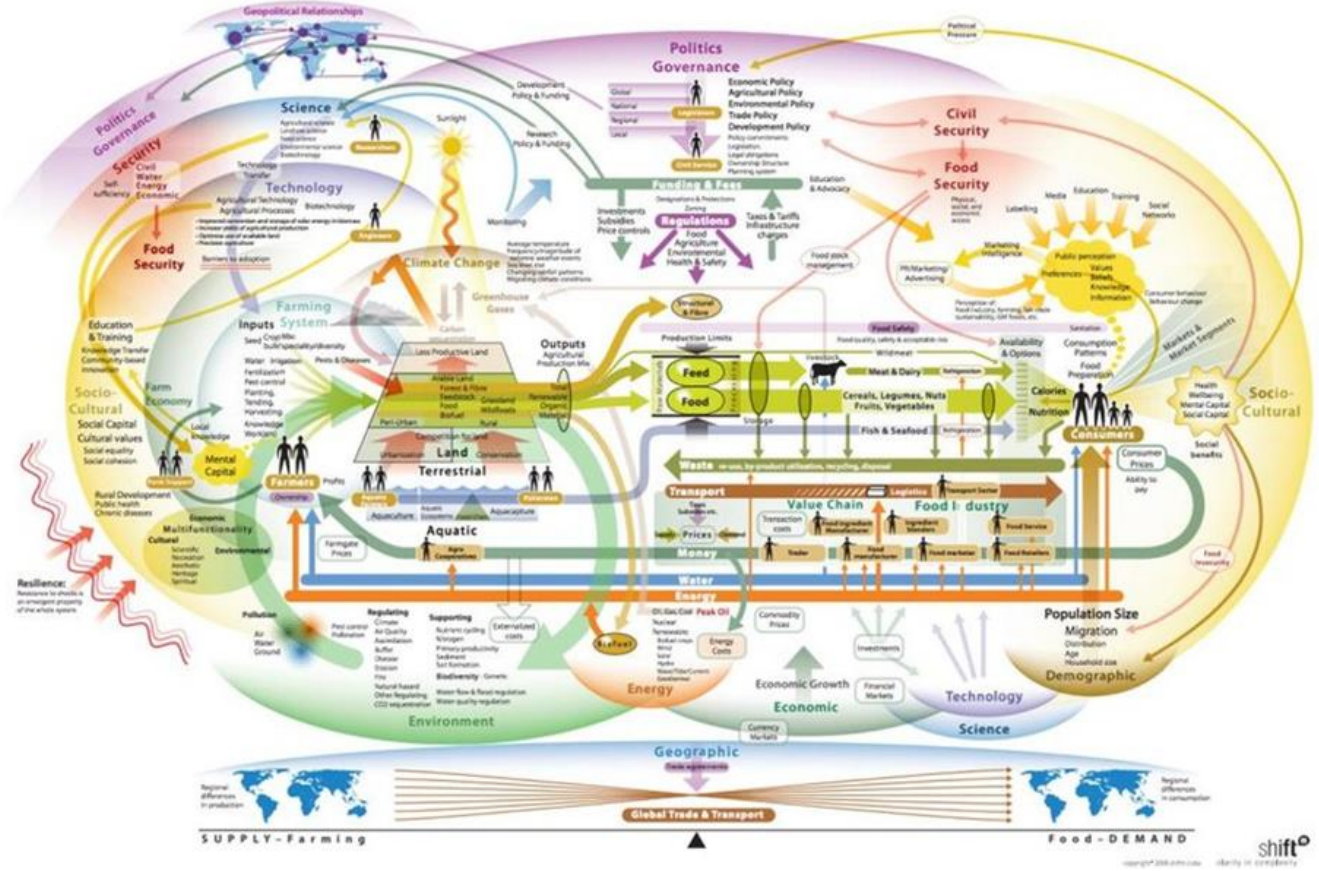
Food contact materials (FCM) made of 100% bamboo are legal

Bamboo / other plant-based additives are NOT authorised FCM additives

- 2021 EU coordinated year-long action found 748 cases FCM – destroyed or border entry prevented
- 2023 UK FSA now requiring removal from market

Risk management in the global food system

- Complex, complicated and interdependent
- Multidisciplinary expert assessment needed to interrogate insights and signals to identify relevance and prioritise
- Frequent review needed to confirm risks and address any changes



Thank you! Any questions?

SQUIRE PATTON BOGGS

Get in Touch…

- Dr Rachel Ward rward@exponent.com +44 (0) 7879 646358
- Dr Rhodri Evans revans@exponent.com +353 (0) 879 377375
- Dr Malcolm Driffield mdriffield@exponent.com +44 (0) 7971 353216
- Dr James Frake jfrake@exponent.com +44 (0) 7971 777647

www.exponent.com

SQUIRE PATTON BOGGS

Impact of supply chain challenges on product safety risks and corrective actions

Chris Occleshaw – Sedgwick
11:15am – 12:00pm

The Recall Index

DOWNLOADED IN

OVER 100 COUNTRIES

The definitive ‘go-to’ guide for professionals seeking to mitigate product recall risk, litigation, and reputational damage.

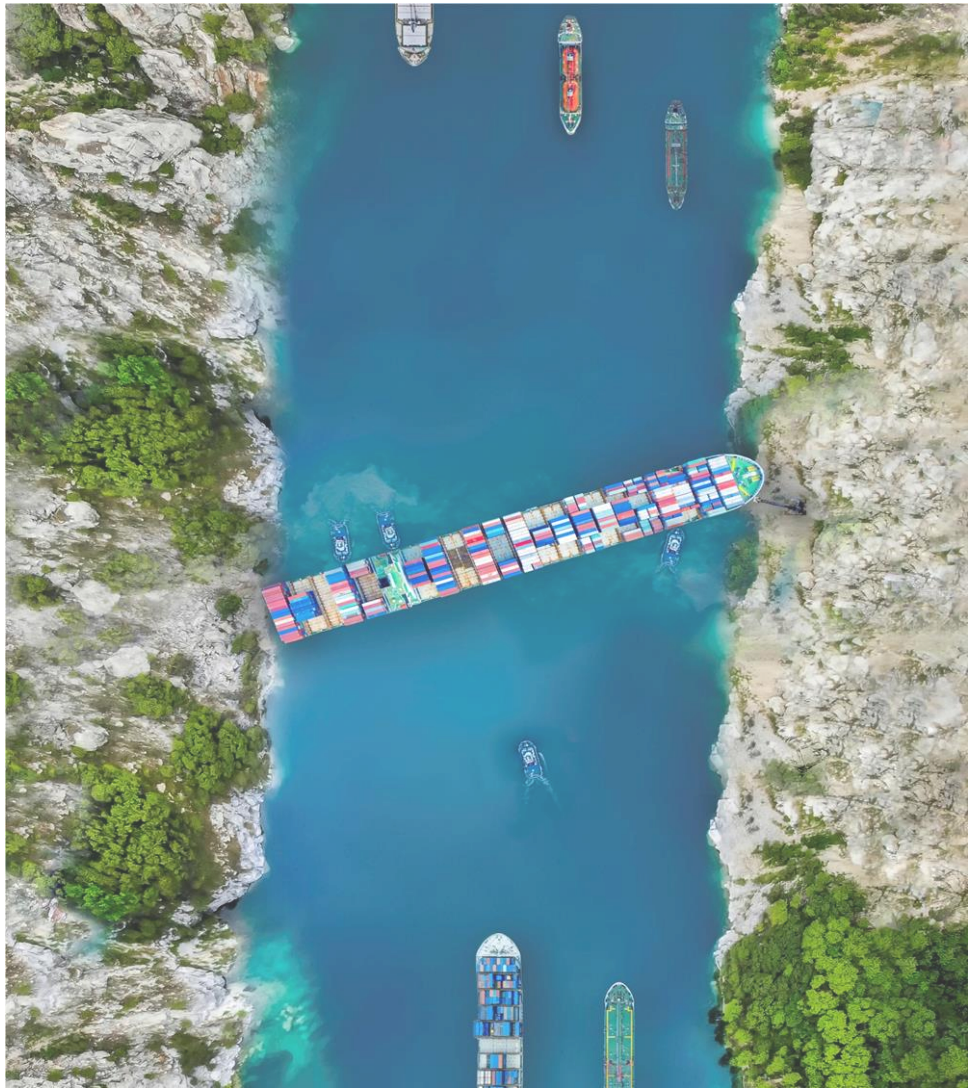
DOWNLOAD YOUR COPY TODAY:

https://bit.ly/INDEX-Q1-2023-EUR


A COMPANY'S GREATEST ASSET IS
NOT NECESSARILY ITS PRODUCT,
BUT RATHER ITS BRAND.

Supply chain challenges

- Material shortages
- Inflation / increasing freight prices
- Demand forecasting
- Port congestion
- Consumer expectations
- Geopolitical issues
- Natural disasters



Overcoming these issues

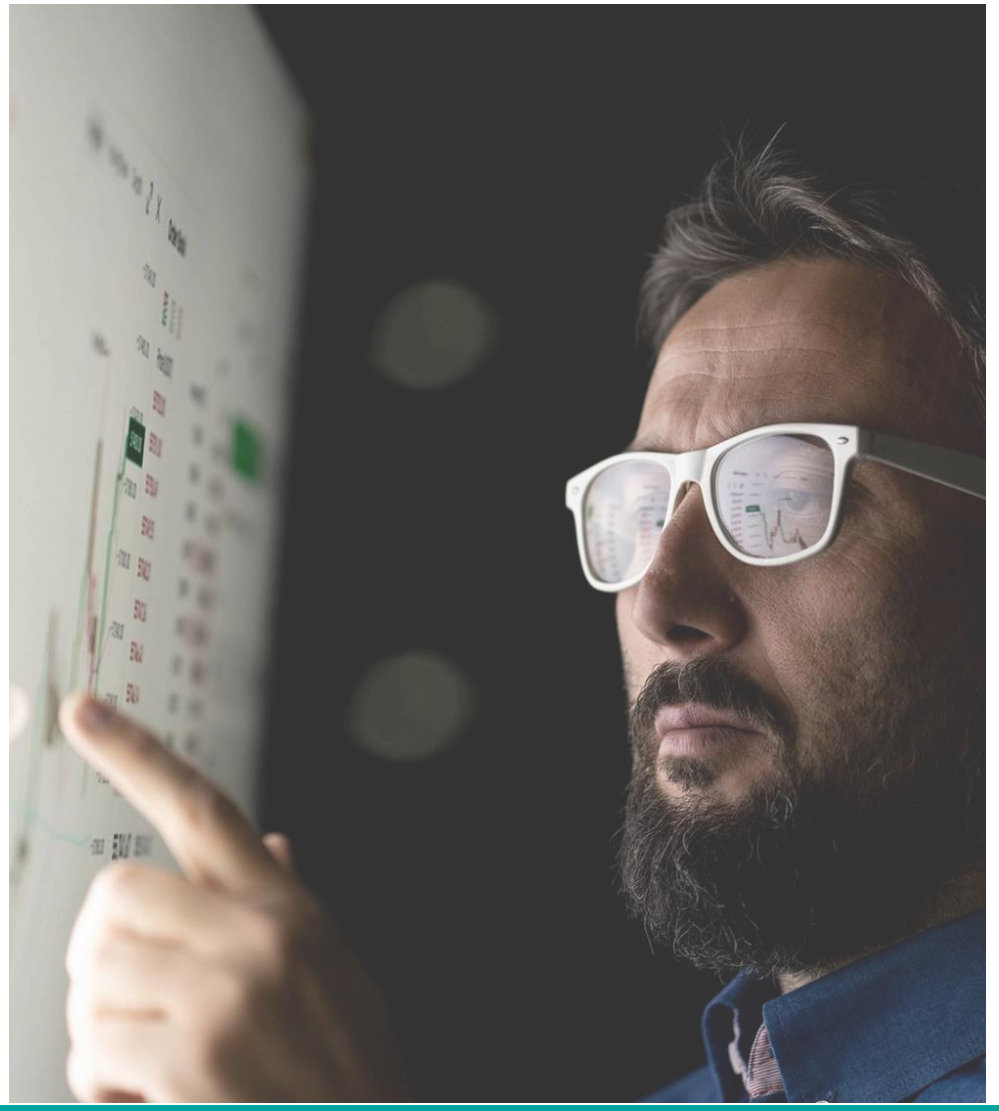
- Form relationships with more suppliers
- Add stock when you can
- Better demand forecasting
- Invest in technology
- Consumer expectations
- Communication / customer service

Global automotive software and electronics market

- The global automotive software and electronics market will reach roughly $462 billion by 2030 (5.5% CAGR)
- What caused the global chip shortage?
- Rise of counterfeit components due to the shortage
- Cybersecurity issues
- Can these corrective actions be performed over the air?

The importance of supply chain traceability

- Reduce losses to counterfeit
- Find the source of contamination or quality defect, inventory management and production
- During a recall it can improve return rates and ensure recalled products aren’t sold on secondary markets e.g. eBay and Facebook marketplace
- Save money on fines, recall operations and brand reputation

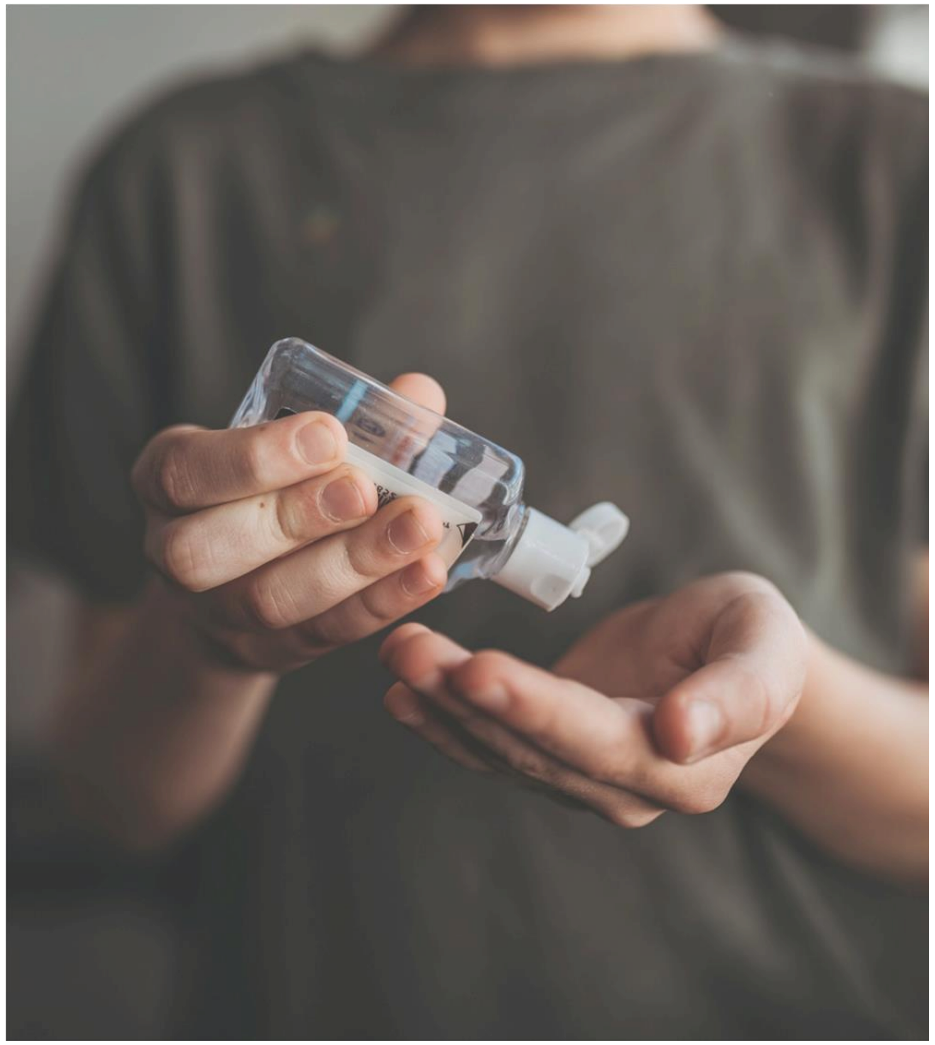


What ESG means for supply chain management

- ESG considerations are particularly critical in supply chain management, as companies must assess the ESG practices of their suppliers to ensure they're aligned with their own values
- Companies that prioritise product safety together with ESG stand to gain a competitive advantage
- This includes ensuring that suppliers are using environmentally-friendly materials and processes, treating workers fairly, and following ethical business practices

Sanitising during a global pandemic

- Few products are considered essential across all demographics and populations. But during a pandemic, sanitising products fit that category
- Recalling a product during pandemic-driven lockdowns and whilst facing supply chain pressures is a feat that arguably no company would have been ready for
- When a potential bacterial contamination was detected in a product that hospitals, healthcare professionals and general consumers turned to for coronavirus prevention, a very public recall ensued
- With 10M+ units impacted across 35+ countries, the emotions and stakes ran high

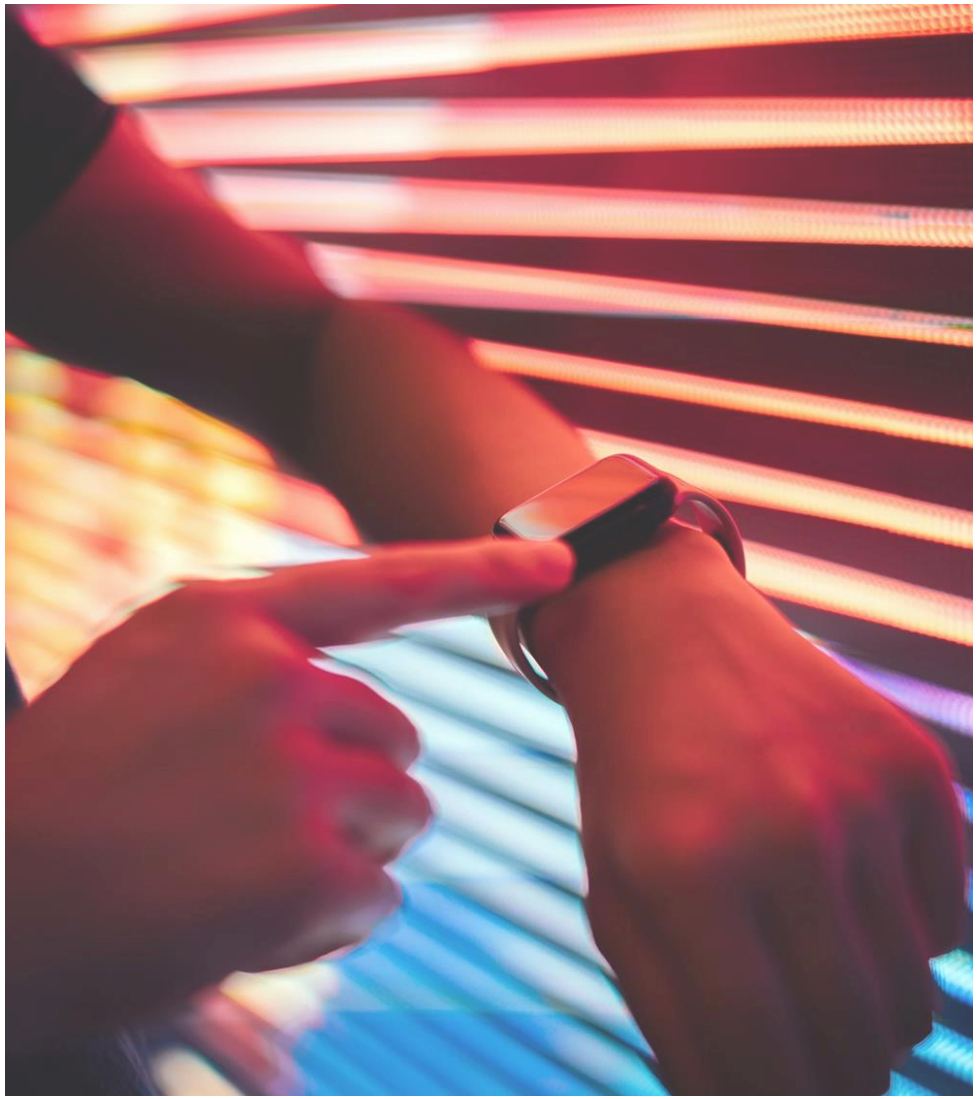


Medical device case study

- The industry is rapidly globalising with imported components growing 25% each year and more than 75% of organisations now have some manufacturing arrangements with China
- Medical device recalls can materialise from contamination or inadequate sterilization during manufacturing, packaging, transportation or storage. Safety issues can arise prior, during or even after use
- Regulators are more lenient in some countries and the WHO predicts that more than 8% of medical devices on the market could be counterfeit
- Philips case study, no replacement products, setting up refurbishment centres, prioritising customers, no single point of authority worldwide

EV batteries

- Recalls should be consistent where possible in every location
- Manufacturers have a clear process for the fulfilment of new smart watches but what about defective returns across multiple countries?
- International carriers made the commercial decision not to move them based on risk
- Can devices be shut down over the air? Resale on secondary websites
- Always in the manufacturers best interest to get the product, social media can spread negativity very quickly



Challenges in the food and beverage sector

- First food and drink is perishable and supply chains are often broader and more interconnected creating a greater risk of exposure
- Reliance on seasonal weather
- Cost of food is rising – up nearly 20% in the last year so if business can't pass this cost on this can lead to cash flow issues with suppliers
- Finding new or cheaper suppliers need to be properly audited
- Cheaper packaging increases risk of contamination

Food study chains have a number of vulnerabilities

- Terror threats are becoming more common particularly in food
- Safety can be deemed less important compared to quality, delivery and price
- ESG – they are being asked to be more transparent on their environmental impact – again new suppliers. Striving to get a competitive edge in the marketplace


27 JUNE 2023
THANK YOU
CHRIS OCCLESHAW - RECALL CONSULTANT
CHRIS.OCCLESHAW@SEDGWICK.COM
SEDGWICK BRAND PROTECTION
sedgwick | brand protection

SQUIRE PATTON BOGGS

Sustainability: a systemic perspective – how the world economy impacts on sustainability objectives and implementation

Benjamin Selwyn – University of Sussex
12:00pm – 12:45pm

Outline of talk

- ESG – higher objectives
- Political limitations
- Means – through ICT and supply chain monitoring
- Context – expanding World Economy = Great Acceleration
- Jevons Paradox
- Environmental costs of digital tech
- What can be done 1) environment, 2) social, 3) governance
- State regulation is key

ESG – higher objectives

- Standards for socially conscious investors to assess potential investments
- Often referred to as: sustainable / responsible / socially responsible investing
- **Environmental criteria** – e.g. how a company protects the environment and how its policies address climate breakdown
- **Social criteria** – e.g. how a company handles supplier relations with suppliers, employers, communities, customers
- **Governance** – e.g. a company's leadership, audits, executive pay

ESG – some basics

- Context: rise of mega institutional investors (e.g. BlackRock)
- Assumption that expanded definition of investor risk – environmental, social, governance – will enhance social outcomes
- Almost half of the FTSE 100 companies set ESG targets for their CEOs
- Exchange traded funds aligned with environmental, social and governance outcomes accounted for 65% of all net inflows into European ETFs in 2022
- More than eight out of 10 institutional investors plan to increase ESG allocations in the future (PWC)
- ESG assets may reach US$33 trillion by 2026 = over 20% of all assets under management globally

Barriers to ESG

- Ron DeSantis – ESG as ‘woke’ (*Governor Ron DeSantis Eliminates ESG Considerations from State Pension Investments*, 2022)
- *Texas Comptroller Glenn Hegar Announces List of Financial Companies that Boycott Energy Companies*, 2022
- Ideology – maximise returns for pension funds
- Can ESG principles survive in increasingly crisis-ridden world?

But, even those who proclaim virtues of ESG don’t appear so ethical:

- "Managers are focused on protecting their investment portfolios from potential damages done by a worsening climate rather than helping prevent that damage from occurring in the first place."

(Tariq Fancy, former Chief of Sustainable Investing at BlackRock)

Context: expanding world economy and climate breakdown

SQUIRE PATTON BOGGS

- The world economy is set to triple in size by 2050 – entailing three times more production, consumption and trade based upon current trends (Hawksworth and Chan: 2015)
- The Intergovernmental Panel on Climate Change (IPCC) warns that ‘Limiting global warming to 1.5°C would require rapid, far-reaching and unprecedented changes in all aspects of society’ (IPCC: 2018)
- Failure to do so threatens an ‘existential risk to humanity’ (Spratt and Dunlop: 2019)

Global value / supply chains and labour exploitation

SQUIRE PATTON BOGGS

- We live in an ‘Age of Global Value Chains’ (World Bank, 2020)
- While the World Bank is generally positive about GVCs it recognises that:
  - GVCs ‘have contributed to lower inflation via downward pressures on labour through heightened competition across countries to attract tasks, in particular when low-wage countries are integrated in supply chains’ (World Bank: 2020, 106)
  - ‘In 63 developed and developing economies, GVC integration as well as other domestic within industry forces, such as technology or markups, contributed significantly to the reallocation of value added from labour to capital within countries between 1995 and 2011.’ (World Bank: 2020, 86)

Digital tech and ESG to the rescue?

SQUIRE PATTON BOGGS

- ‘Digital technologies are already being used to improve efficiency, reduce waste and provide less carbon-intensive means of environmental management. ESG frameworks, in turn, can help organisations apply a broader approach to sustainability and highlight the potential risks in applying new digital technologies’ (PWC)
- ESG requires reporting firms’ activities/impacts
- If only it was that simple… Jevons Paradox…

Jevons Paradox

- Capitalism generates historically unsurpassed rates of technological innovation and economic growth
- But, tech change orientated primarily towards profit-seeking, not environmental protection
- Even when it appears to offer the opportunity of greater resource efficiencies, tech change tends to contribute to an even more rapid depletion of environmental resources
- This is because, as William Stanley Jevons noted in his ‘paradox’ – efficiency increases stimulate further growth
- He gave example of rising coal use in increasingly fuel-efficient steam trains

Environmental cost of digital tech

- Sending / receiving an email uses between 4g – 50g of CO2. According to a Guardian investigation a ‘typical’ business user of email – including sending, filtering and reading it – generates an annual carbon footprint of 135kg
- The production of one desktop computer and monitor uses 1.8 tons of inputs - 240 kilograms of fossil fuel, 22 kilograms of chemicals and 1,500 kilograms of water – the equivalent of a sports utility vehicle (UN News: 2004, Ruediger and Williams eds: 2003)

What can be done 1 - environment?

- Regulation – anti-business?
- Divestment in fossil fuels
- Investments in a green economy:
  - Agro-ecology
  - De-meatification / expansion of plant-based food and mass re-wilding
  - Green cities (water conservation, vertical farming, public transport)
  - Renewable energy
  - De-carbonise the economy through de-growth

What can be done 2: social

- Establish living wages
- Use tech to eliminate dangerous / dirty jobs – replace with Universal Basic Income funded by tech-tax
- Reduce working hours (eliminate unnecessary meetings!)
- Increase awareness and provision of care work

What can be done 3: governance

- Management structure – put workers on company boards
- Link corporate performance metrics to positive (environmental and social processes and outcomes)
- Company policies and values – reward lowest paid staff first and most
- Health and safety – include working hours and quality of work

But all of this requires state regulation

- Free markets have never existed and will never exist – markets are always regulated
- Key question: how are they regulated, for what ends?
- Regulation can stimulate progressive or regressive investments
- Regulation and subsidies can crowd-in progressive investments
- Reciprocity between state subsidies and corporate investments can reduce risks of free-riding

Questions

SQUIRE PATTON BOGGS

Environmental impairment liability insurance

Mathew Hussey – Gallagher
1:30pm – 2:15pm

Insurance industry

- 85% of global insurers believe ESG will impact all functions of their business
- 2021 estimated US$119 billion insured losses from natural catastrophes (floods, wildfires, hurricanes etc.), weather being US$111 billion (Swiss RE Institute 2022)
- ClimateWise – insurers have a role in supporting a climate resistant future through risk modelling, providing protection and financial resilience through underwriting and capital for infrastructure through to green products

Insurance Development Forum (IDF)

- **Press Release, 1 June 2023:** the Insurance Development Forum (IDF), the University of Oxford, and the GEM Foundation signed a new agreement to advance the Global Resilience Index Initiative (GRII) and establish a Global Resilience Hub to help countries, financial institutions and investors, map and quantify their current and future climate and disaster risks and demonstrate the benefits of investing in resilience. The collaboration will prevent leaders from ‘flying blind’ on physical climate risk and focus vital investments to areas of greatest need
- Combining the insurance industry’s unparalleled foresight and modelling expertise, with the best UN and scientific data, the GRII will work with financial institutions and governments and capacity building programmes such as the **Global Risk Modelling Alliance** to improve the metrics and analysis essential to mobilise finance for adaptation and to better understand potential future loss and damage

Why is ESG important to stakeholders

- Meeting legal and accounting requirements
- Corporate reputation – environmental pollution / damage ‘newsworthy’
- Financially makes sense – reduces costs (energy, waste etc.)
- Risk reduction - mitigate disruption and loss

Where insurance is changing

- **Use of funds (Government Involvement) and Reinsurance** – the California Wildfire Fund established 2019 aims to lower the risk of and damage from utility-caused wildfires. UK - Flood Re is a joint industry and government initiative.
- **Marine – Poseidon Principles** – to provide transparency on carbon emissions and support the shipping industry's green transition. Leading marine insurers make a commitment to shipping's green transition by integrating climate considerations into their underwriting decisions.
- **Aviation** – Sustainable Aviation Fuel Program (funding, insurance support), One market is seeking to reduce premium by a set percentage if various agreed ESG goals at inception are completed by expiry.

Insurers are looking to balance their portfolios with operations which are seen as greener, either in their activities (wind farm installation and maintenance for example) or in their operation (battery or dual fuel, LNG powered etc.). The challenge with crediting ship/plane owners for new greener technologies by way of premium reduction, is that these technologies are largely untested and a step into the unknown in terms of risk management. This is especially the case with new fuel technologies such as ammonia, hydrogen etc.

Where insurance is changing

- **W&I** – extending cover to energy efficiency, environmental compliance, carbon neutrality, emissions reduction purchase agreements (loss true value and warranted value). Tailored W&I for ESG warranties. Increasingly reports being seen.
- **D&O** – rise in ESG litigation, Greenwashing, Climate change claims
- **Carbon credits** – Insurance against Fraud, Third Party crime, Negligence. ART developments.
- **Adverse weather – parametric insurance** – loss impacting delivery of carbon credits from a nature based solution
- **Agricultural / forestry** – parametric insurance, an established loss value triggered by a set triggering event
- **Real estate** – green buildings reinstatement, support timber in buildings
- **Environmental Impairment Liability** – growth in operational risks cover, Biodiversity cover, PFAS/PFOS claims and exclusions
- **Reinsurance / ART** – Captives, financial structures (hydrogen storage, carbon sequestration)

Are clients environmental (pollution) liability risks insured correctly?

SQUIRE PATTON BOGGS

- Majority of Standard insurance policies (property, public liability, contractors all risks etc.) have either a complete exclusion or severe restrictions on pollution cover
  - Identifiable, sudden, unintended…
  - No cover for gradual, historic, on site clean-up, **natural resource damage**, prevention/mitigation, contractual liabilities, long-term risks, known pollution, etc.
  - No or limited cover for statutory liabilities
- Pollution related issues can be long term – claims can arise many years after pollution commenced (Asbestos/PCBs/PFAS/PFOS etc)

Environmental Impairment Liability insurance

SQUIRE PATTON BOGGS

What extra cover does it provide?

- Gradual, historic and sudden & accidental (operational) pollution liabilities
- Onsite and offsite third party and statutory clean up
- Environmental Liability Directive or other Regulatory Action for Environmental / Biodiversity damage
- Voluntary clean-up actions to avoid regulatory enforcement
- Emergency costs and mitigation / preventative measures
- Third party bodily injury including nuisance
- Third party property damage including loss of use of property and consequential loss, e.g. third party business interruption
- Legal defence costs and other experts costs
- Cover can include onsite Business Interruption Loss, contractual liabilities
- Multiple insureds, including lenders, project principals, etc. to provide security

Business operational cover

New pollution conditions and / or pre-existing ‘historic’ contamination

- Single site, multiple global operations (operators, owners, contingent landlords, investors, pension funds)
- Operational pollution (new conditions) annual or up to three to five years
- Covers environmental damage / biodiversity impact
- Includes change in law
- Transport cover (contingent or first party)
- Can be extended to cover first party business interruption
- Growing market in a range of business such as water, waste, transport and manufacturing
- Increasing requirements for comprehensive pollution liability cover, due to solvency concerns, to mitigate disruption and loss. Accounting for liability

Contractors pollution liability

SQUIRE PATTON BOGGS

Pollution conditions caused by covered operations

- Liability from new pollution conditions and release/mobilisation of existing contamination
- Contractor primary liability as ‘polluter’, but employer retains contingent liability long-term
- Occurrence or claims-made wording – long-term cover
- ‘Blanket’ operations or project-specific cover for contractors
- Contractor- or owner-controlled project policy (multiple insureds), or contingent policy for employer only
- Typically used for:
  - Large scale infrastructure (bridges, tunnels, roads, etc.), waste (WtE, etc.) pipelines, and construction projects. Increasing offshore enquiries
  - Remediation and / or redevelopment projects (e.g. logistics/housing on brownfield land etc.)

Landowners / development

Comprehensive cover for site owners / developers

- Cover for historic contamination typically associated with brownfield sites
- Structure minimises potential gaps in cover before, during and after development
- Possible insurance for legacy (previously owned) sites
- Possible cover on an occurrence wording rather than claims made for site works phase
- Biodiversity offsetting – protection against damage / pollution of site

Future risks

SQUIRE PATTON BOGGS

Future areas to watch?

- Early warning signs that directors and officers will be targeted in a personal capacity
- Courts – settle environmental issues first, funders second
- Emerging chemicals – the next PFAS/PFOS
- Increased greenwashing and climate change claims
- Rise in parametric insurance and ART type insurance structures

Questions

Thank you

SQUIRE PATTON BOGGS

Please Contact

Mathew Hussey
Environmental Director
Tel: 01305 776516
Mob: 07977 251456
Email: Mathew_Hussey@ajg.com

Natalia Edwards
Tel: 01392 876771
Mob: 07858365315
Email:Natalia_Edwards@ajg.com

SQUIRE PATTON BOGGS

Trends in supply chain due diligence

Tomas Sys & Eleanor Hinde – Ramboll
2:15pm – 3:00pm

Contents

SQUIRE PATTON BOGGS

Introductions

Tomas Sys
Principal, UK M&A and
ESG Advisory Lead,
Ramboll

Tomas helps financial sector and corporate clients navigate and identify ESG risks and opportunities during due diligence process and assess means of incorporating ESG aspects into value creation plans. Tomas has over 30 years' experience in advising throughout the investment lifecycle on environmental, health & safety (EHS) risk identification, mitigation and transfer and ESG matters including strategic advisory across a broad spectrum of industrial sectors with assets located in over 40 countries worldwide.

tsys@ramboll.com

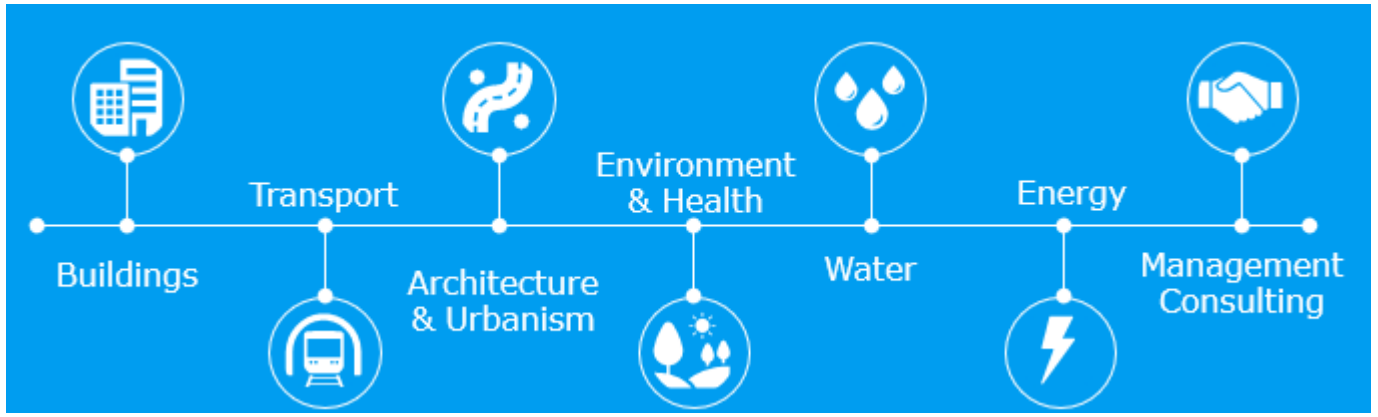
Eleanor Hinde
Senior ESG Consultant, Ramboll

Eleanor is an ESG due diligence professional with experience across a variety of sectors and with buy- and sell-side analysis. Eleanor also supports investors and corporates with ESG benchmarking, reporting and strategy. Eleanor has experience in commercial due diligence and within impact management - designing and implementing ESG impact management frameworks for regional development programmes. For the latter, Eleanor was predominantly based in eastern and southern Africa.

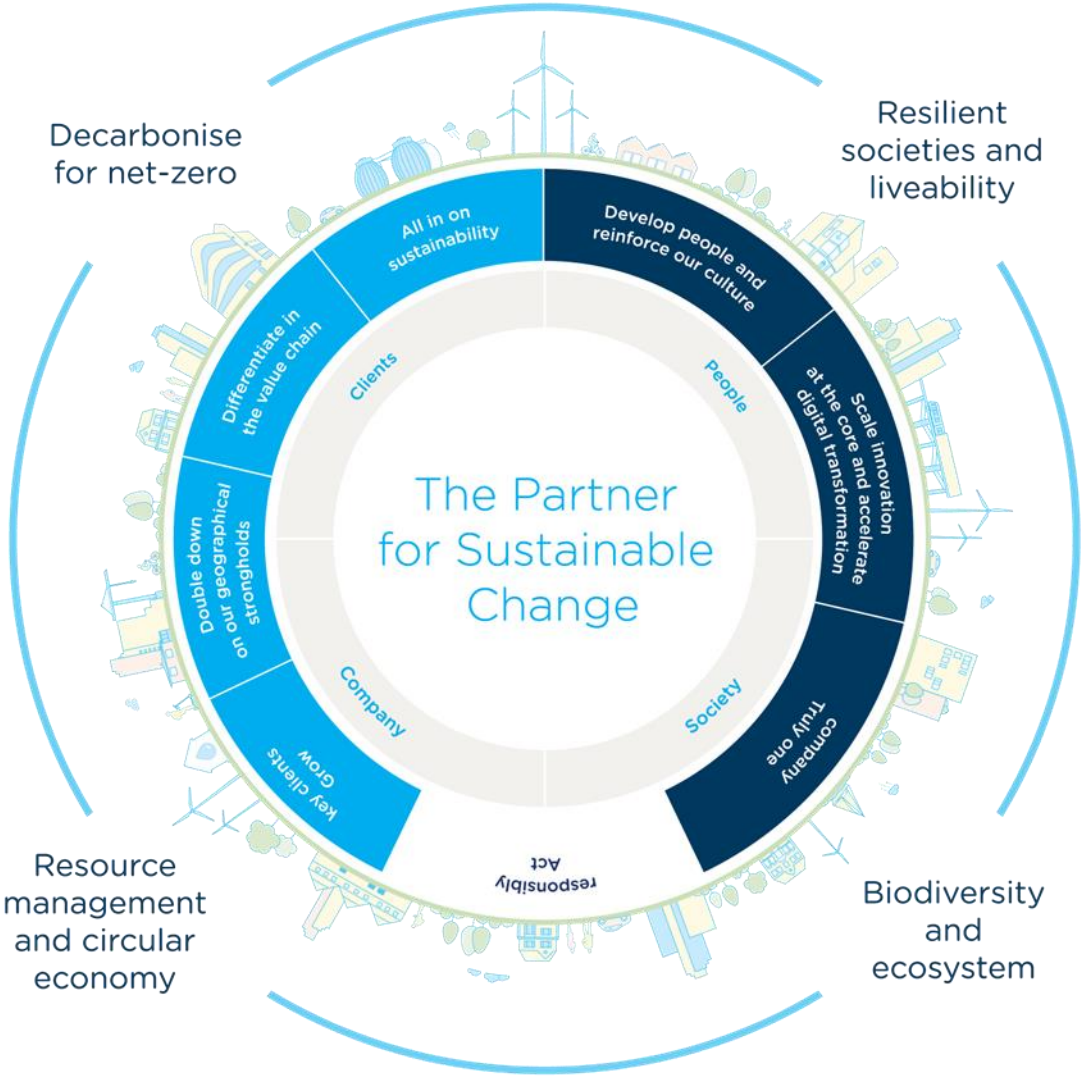
ehinde@ramboll.com

Ramboll in brief

- Independent architecture, engineering and consultancy company
- Founded 1945 in Denmark
- 17,500 experts
- Creating sustainable solutions across Buildings, Transport, Energy, Environment & Health, Water, Management Consulting and Architecture & Landscape.
- EUR 2.2 billion revenue
- 98% owned by Rambøll Fonden – The Ramboll Foundation (2% employee ownership)



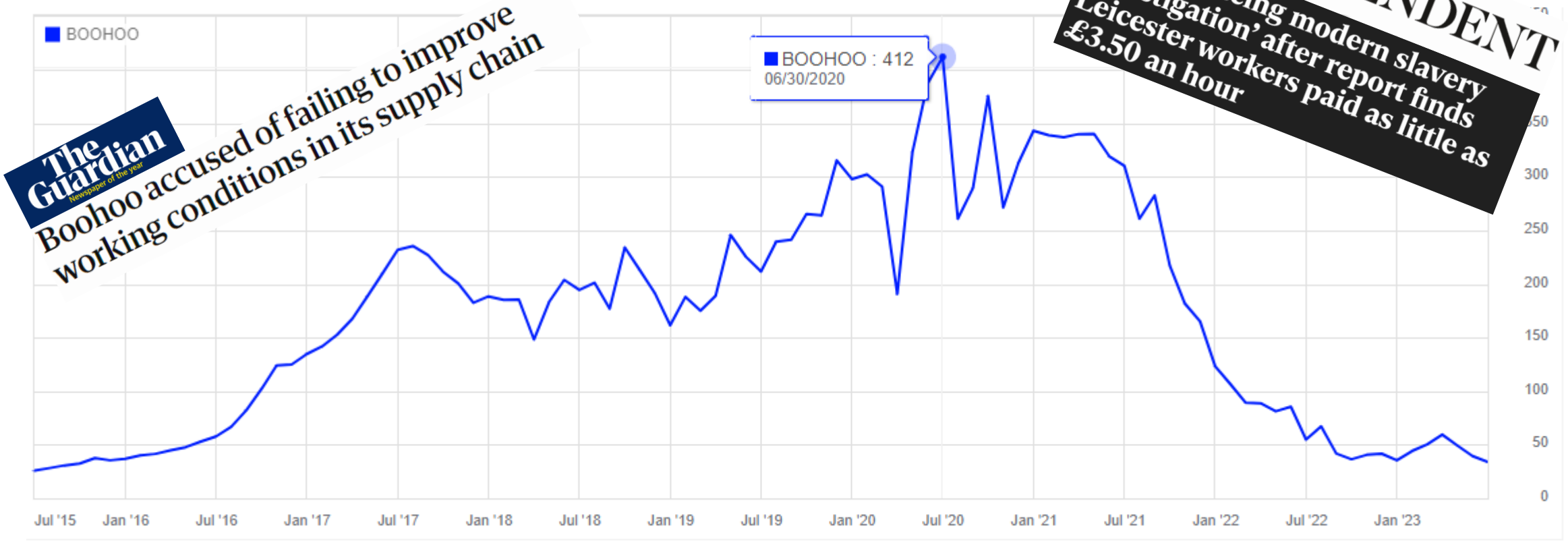
The partner for sustainable change



Ramboll's geographical footprint

Australia	3	Italy	2
Austria	1	Japan	1
Belgium	3	Malaysia	3
Brazil	6	Mexico	2
Canada	2	Netherlands	1
China	3	Norway	17
Cyprus	1	Poland	1
Denmark	14	Qatar	1
Faroe Islands	1	Romania	1
Finland	23	Saudi Arabia	1
France	4	Singapore	2
Germany	16	Spain	2
Gibraltar	1	Sweden	30
Greenland	3	Switzerland	1
Hong Kong	2	UAE	2
India	11	UK	17
Ireland	1	US	64

Supply chain impacts on share price



The Guardian
Newspaper of the year
Boohoo accused of failing to improve working conditions in its supply chain

INDEPENDENT
Boohoo 'facing modern slavery investigation' after report finds Leicester workers paid as little as £3.50 an hour

FORBES > BUSINESS > RETAIL

Can Boohoo Make Investors Smile After Supply Chain Scandals And That 11-Cent Dress?

Forbes

Source: Graph taken from London Stock Exchange. An LSEG Business. 20th June 2023.

Drivers for increased supply chain due diligence

Responding to regulations

- Corporate Sustainability Due Diligence Directive
- Corporate Sustainability Reporting Directive
- Regulations on forest risk commodities
- Germany's Supply Chain Due Diligence Act

Meeting stakeholder expectations

- Changing consumer preferences
- Asset owner and asset manager requirements
- Employee expectations

Reducing vulnerability to disruption

- Climate Change
- Political
- Socioeconomic
- Health
- Cyber security
- Terrorism

Increased data availability

- Rise in data available and in third-party providers
- Access to wider audiences
- Increasing transparency

Increased supply chain due diligence

01

In Operations

Corporations enhancing their supply chain governance, policies and processes

02

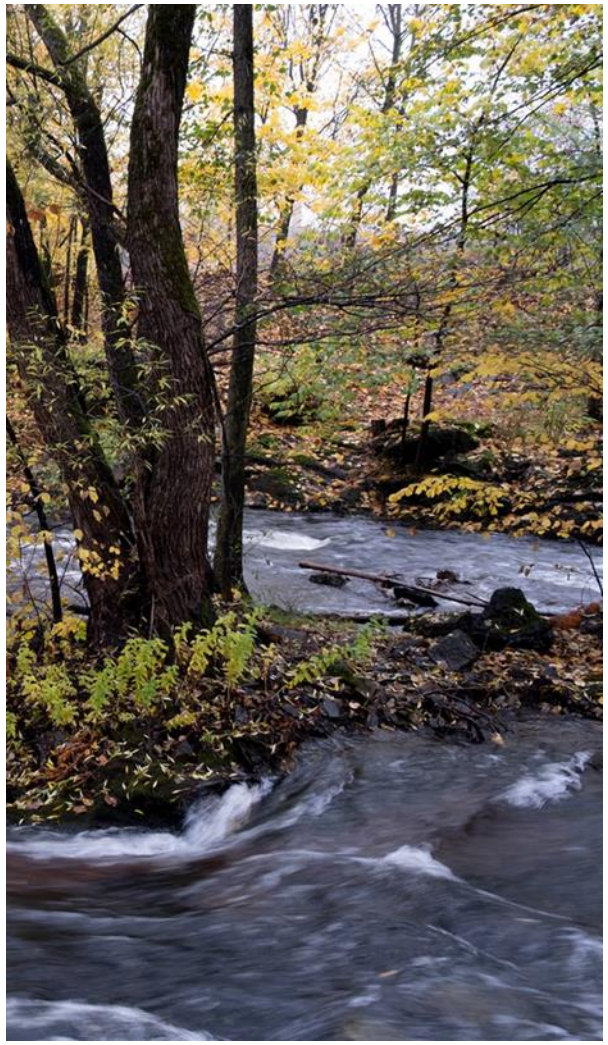
In M&A Due Diligence

Private equity investment and corporate M&A conducting due diligence inclusive of the supply chain

Operational supply chain due diligence

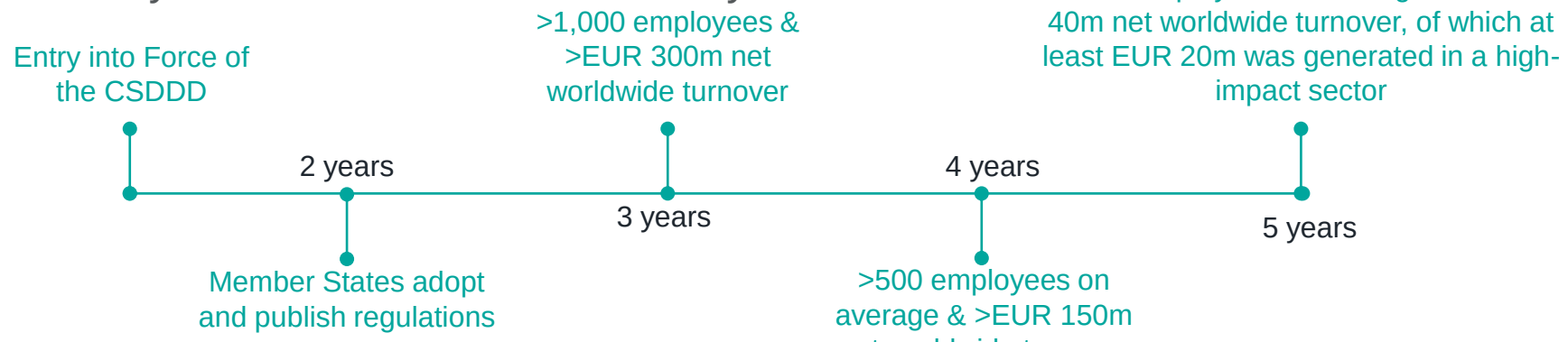
- Increased investment in supply chain risk management often contracting third parties or purchasing third-party data sets
- Enhanced governance of supply chain management (policies, roles and responsibilities, supplier approval processes, contractual terms, supplier monitoring, performance reviews, product origin tracing, etc.)
- Potential shift in supplier engagement strategy - focus on relationship building rather than multiple short-term engagements

Corporate Sustainability Due Diligence Directive (CSDDD)



In-scope companies required to conduct due diligence with the following steps:

- Integrate due diligence into policies and risk management systems;
- Identify, prevent and mitigate actual or potential adverse impacts;
- Implement a complaints procedure;
- Monitor the effectiveness of DD policy and measures; and
- Publicly communicate on DD annually.



Note: Applicability of law depends on EU versus non-EU status and turnover. Only EU-based companies currently shown on slide. Proposed regulation is subject to change. Always consult the EU's latest documentation as your most accurate and up-to-date port of reference.

Forest Risk Commodities (FRC) regulations

SQUIRE PATTON BOGGS

Use of FRCs in commercial activity

Not to use an FRC in UK commercial activities unless relevant local laws were complied with, and implement a due diligence system in relation to an FRC:

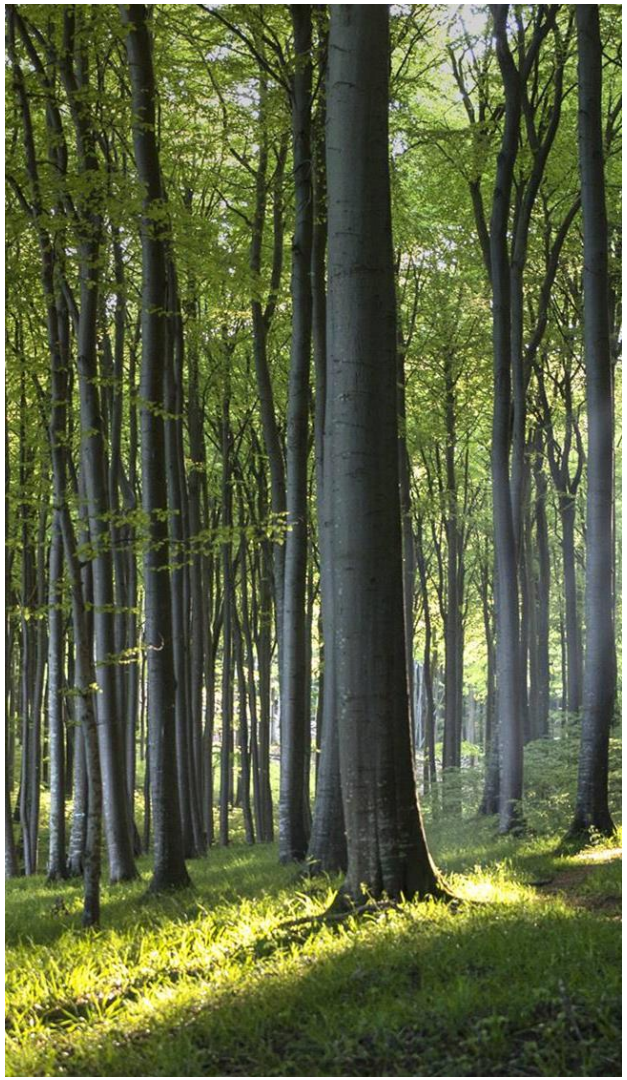
- identify and obtain information about that FRC;
- assess the risk of non-compliance with relevant local laws; and
- mitigate the risk.

Annual reporting on due diligence system to a regulator, which must then make reports public.

Regulation on deforestation-free products

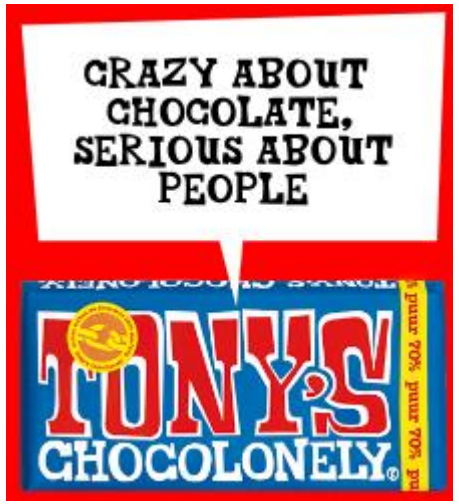
Mandatory DD and a DD statement that goods placed on EU market are not linked to deforestation/ forest degradation:

- verify compliance with relevant legislation in producer countries, including human rights and indigenous peoples' rights;
- collect relevant information and provide geolocation coordinates of plots of land their commodities are sourced from; and
- take adequate mitigation measures (e.g. satellite mapping, field audits, isotope testing) to check product origin.



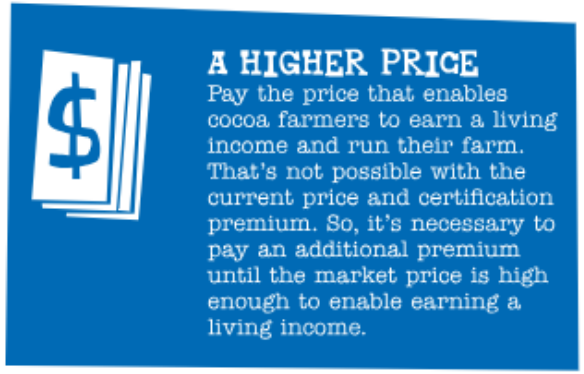
Note: Proposed regulation is subject to change. Always consult the UK or EU's latest documentation as your most accurate and up-to-date port of reference.

Supply chain engagement: case study

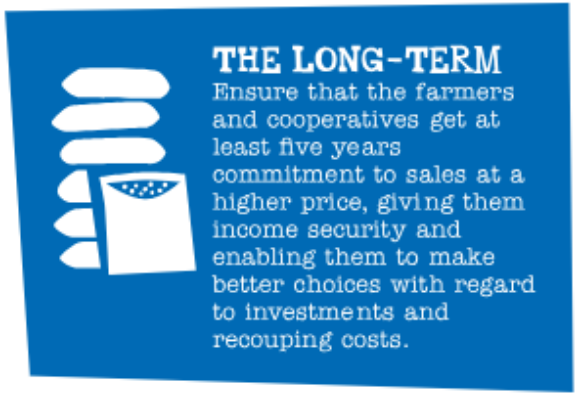


- Mission: *"Make 100% slave free the norm in chocolate"*

- Direct trading with cocoa farmers and cooperatives
- Tony's Beantracker: shared value chain platform connecting all supply chain actors, who enter data about incoming bean volumes, bean inventory, and outgoing bean volumes.



- Fairtrade premium
- Tony's premium
- Aim to ensure a living wage for farmers

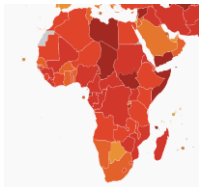


- At least five-years' commitment

Corruption Perceptions Index World Ranking

Ghana: 72/180

Cote d'Ivoire: 99/180



Source: Images and content taken from Tony's Chocolonely Website, 21st June 2023. Corruption perceptions Index and map from Transparency International

What to do?

1. Map out your supply chain
   a) Conduct a review of compliance obligations and stakeholder expectations
   b) Identify high-level ESG risks including at lower tiers
2. Ensure supply chain ESG risk is formally embedded into the risk management system
   a) Implement a supplier management policy
   b) Establish objectives/targets
   c) Score suppliers/products on ESG credentials
   d) Contracts inclusive of ESG requirements
   e) Enforce supplier Code of Conducts
3. Engage with suppliers - explore opportunities to enhance supplier ESG maturity and to exploit value creation opportunities
4. Implement robust data collection and monitoring – minimise data silos and risk of data manipulation
5. Collaborate across the industry to align on industry standards

Consideration of supply chain in M&A due diligence

- ESG due diligence includes an **identification of supply chain risks to the Target** (sector, geography, operations, product-specific)
- ESG due diligence **assesses the Target's supply chain management**
- **Increased ESG investigation into a Target's top-tier suppliers**, in particular their ESG management practices and any known/potential impacts
- Target's ESG maturity/data availability **can be a challenge within auction transaction process**

Assessing supply chain management in ESG due diligence

SQUIRE PATTON BOGGS

Observations

> The Target's **supply chain includes the mining and processing of certain precious metals**... These can be **high-risk value chains in terms of human rights** (e.g., child labour and modern slavery) and environmental violations

> The Target's Framework Contractor Agreement requests that **all contractors provide a fully completed Safety, Quality and the Environment Questionnaire**, and conduct work in accordance with the Target's Health and Safety, and Environmental policies and procedures. ... Suppliers are asked if they publish a Modern Slavery Statement, Bribery, Corruption and Equality policies... However, this **process is reportedly not formalised**.

Recommendations

> Development of a **Supplier Code of Conduct**

> Establish a **supplier management system**, in particular tracking H&S performance

> Engaging with suppliers to **ensure compliance with the UK Modern Slavery Act, 2015**

> Engaging with suppliers to **explore takeback schemes** and other arrangements to support a **more circular business model**

Key takeaways for robust supply chains

Start internally

- Horizon scanning – build a business case reflecting ESG assets
- Match capabilities with ESG potential
- Set cross-functional collaboration to harness benefits across value chain

Engage with your supply chain

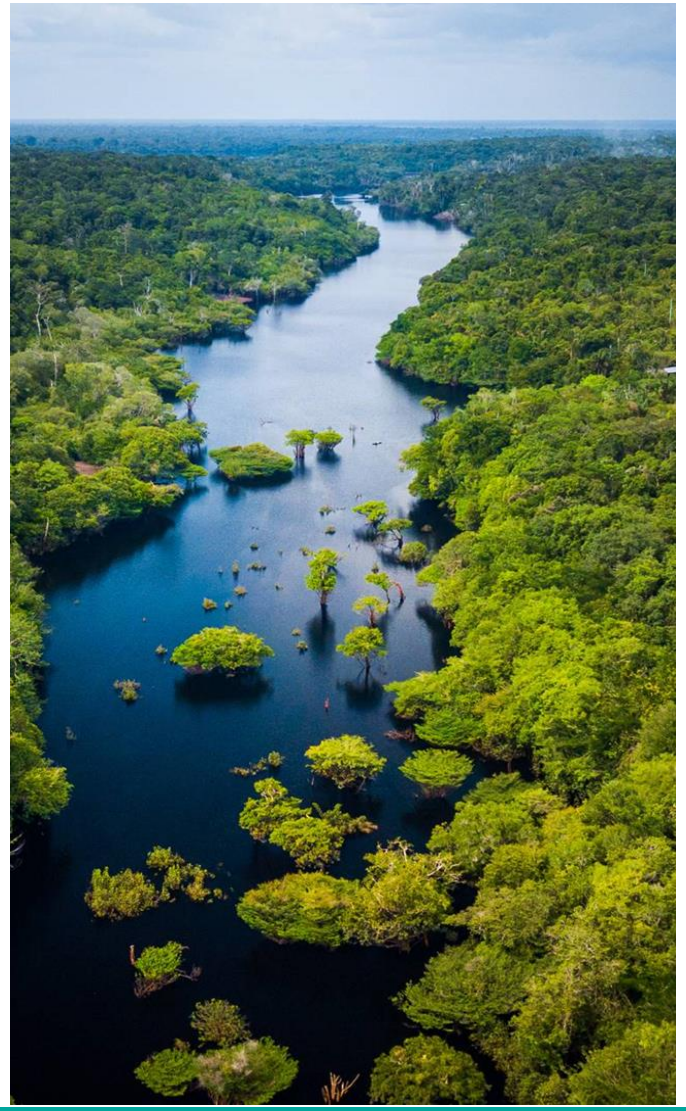
- Map supplier network including lower tiers
- Strengthen engagement on ESG priorities
- Support your suppliers in developing their own ESG goals

Use technologies to track data for ESG insight

- Streamline ESG data collection/reporting – minimise data silos
- Strengthen ESG risk assessment/monitoring
- Improve visibility of ESG performance

Drive industry/sector collaboration

- Engage with peers and stakeholders that share your ESG goals
- Collaborate to align on ESG standardisation



Questions

SQUIRE PATTON BOGGS

Risks associated with communication of green credentials

Anita Lloyd – Squire Patton Boggs
3:15pm – 3:45pm

What is greenwashing?

- Falsifying an impression or providing misleading information about environmental attributes of a product, service or business
- From overly-general phrases such as "good for the environment“, through to unclear or unproven statements about an item’s environmental credentials
- Can adversely impact all brands trying to engage on environmental matters, even well intentioned
- Not new, but consumers and regulators increasingly conscious

*"Misleading environmental claims occur where a business makes **claims** about its products, services, processes, brands or its operations as a whole, or **omits** or hides information, to give the **impression they are less harmful or more beneficial to the environment than they really are**."*

- Green Claims Code, para 2.9

Green claims regulatory framework

- Primarily grounded in general consumer protection/trading standards legislation (e.g. Consumer Protection from Unfair Trading Regulations 2008 and Business Protection from Misleading Marketing Regulations 2008)
- Advertising Codes (e.g. CAP and BCAP)
- Regulatory Guidance (e.g. CMA Green Claims Code)
- Starting to see development of specific legislation:
  - EU proposed Directive on green claims
  - EU proposed Directive empowering consumers for the green transition
  - French Climate and Resilience Act

CMA Green Claims Code Checklist

SQUIRE PATTON BOGGS

1. Accurate and clear for all to understand
2. Up-to-date, credible evidence to support the claim
3. Tells the whole story of a product, or relates to one part without misleading
4. Doesn’t contain partially correct / incorrect aspects or conditions
5. General claims made must reflect the whole life cycle of the product
6. Conditions or caveats must be set out
7. Claim cannot be misleading to customers or suppliers
8. Does not exaggerate positive environmental impact, or contain anything untrue- whether stated or implied
9. Durability or disposability information is clearly explained and labelled
10. Does not miss out or hide information about the environmental impact
11. Information which does not fit into the claim must be accessible via other media (e.g. QR code)
12. Features or benefits that are necessary standard features or legal requirements are not claimed as environmental benefits
13. Comparisons must be fair and accurate as well as clear

Legal risks of greenwashing

- Enforcement by regulators – potential for criminal and director liability
- Digital Markets, Competition and Consumers Bill will give CMA significant new consumer protection enforcement powers (e.g. civil penalties based on company turnover) – likely to become law in late 2023
- Sanctions / rulings from advertising standards bodies
- Adverse publicity / social media campaigns
- Reputation / brand damage
- Civil claims by consumers / NGOs
- Contractual claims – misrepresentation

Regulatory activity (UK)

- CMA ongoing investigations:
  - Fashion brands
  - FMCG
- ASA guidance to complement the CMA's work (Dec 2021) – and ASA enquiries into specific issues (2022)
- CMA advice to the government (March 2022) – pushes for specific legislation to include definitions for problematic terms like carbon neutral
- ASA published result of research (Oct 2022) into:
  - consumer (mis-)understanding of carbon neutral and net-zero claims
  - consumer perceptions of hybrid claims in the electric vehicle market
- ASA already very active in ruling on challenges against green claims in advertising
- CAP/BCAP Guidance update June 2023 – on initiatives designed to reduce environmental impact

ASA case study 1 – "good for the planet"

- A plant-based milk brand claim that it was "Good for the planet"
- The complainant, who believed commercial almond farming caused environmental damage, challenged whether the claim was misleading and could be substantiated
- ASA considered there was little context provided to interpret the claim – therefore it could be interpreted in more than one way (including net positive environmental benefit from the products, or that the products were less detrimental to the environment compared to dairy equivalents)
- The CAP Code states that the basis of environmental claims must be clear and that unqualified claims could mislead if they omit significant information
- ASA concluded that the advert was misleading and breached the Code

alpro

ASA case study 2 – "100% recycled"

- A soft drink advert – "DELICIOUSLY REFRESHING, 100% RECYCLED*". Shots of the bottle with a recycling logo and the text "I'M 100% RECYCLED PLASTIC" visible
- Asterisk linked to small text at the bottom of the poster: "Bottle made from recycled plastic, excludes cap and label"
- Complaint upheld – ASA considered consumers would understand the claim to mean that all components of the bottle were made entirely from recycled materials
- Qualifying wording was in very small text in the left-hand bottom corner of the advert – therefore could be overlooked
- **BUT** even if some consumers had seen the qualification, the overall impression was still that all parts of the bottle were entirely recycled - the qualification was insufficient to counter that impression

ASA case study 3 – financial sector

- A major bank claimed it was investing $1 trillion globally to help clients transition to net zero and helping to plant 2 million trees
- 45 complaints received by ASA claiming the adverts were misleading for omitting significant information about the bank's financing of greenhouse gas-emitting industries
- Complaints upheld by the ASA -
  - Financing natural gas and oil production during the transition to net zero (while understandable) was material information likely to affect consumers' understanding of the adverts' overall message, and should have been made clear in the adverts
  - The environmental claims were unqualified and were misleading for omitting significant information
- Similar recent ASA decision regarding an airline's claim that it was "CONNECTING THE WORLD. PROTECTING ITS FUTURE" – the basis of the claim had not been made clear, and it had not been adequately substantiated, so it breached the Code

ASA case study 4 – water sector

- Two very recent ASA decisions
- 1 – Claims about creating wetlands, making homes for wildlife, protecting nature, less chance of floods in the future – "In fact, everything they do today is for tomorrow…"
- 2 – Claims about working towards protecting water, nature and our future, and tree planting – "Let's do right by our environment, our community, our water…"
- Complainants challenged both due to omission of information about the companies' history of sewage pollution
- ASA upheld one complaint but not the other:
  - The overall impression of one advert was that the company was making a positive overall contribution to the environment, but it had been fined multiple times for recent pollution incidents
  - The other company had a more recent positive compliance record, which produced a different assessment
- CAP Code requires the basis of environmental claims to be clear and unqualified claims could mislead if they omit significant information
- CAP/BCAP Guidance update on 23 June 2023 following these (and other similar) cases

KLM case

- Case brought by Dutch climate NGOs (supported by ClientEarth) in Dutch courts against KLM's 'Fly responsibly' advertising campaign
- Recently granted permission to proceed by District Court of Amsterdam (following an admissibility hearing)
- Alleges breach of consumer law standards - that the ads create a false impression that KLM's flights do not contribute to the climate emergency
- First case of its kind to challenge airline industry environmental claims
- Also first use of recently passed Dutch class action law by an NGO in relation to a greenwashing claim
- KLM has dropped the advertising campaign, but the case will still proceed
- Very recent reports of a complaint by an EU consumer body to the European Commission about airline greenwashing more generally

Questions

SQUIRE PATTON BOGGS

SQUIRE PATTON BOGGS

Managing developing risks in the UK and internationally

Nicola Smith – Squire Patton Boggs
3:45pm – 4:15pm

Background – single market principles (EU)

- Single market
  - One territory without any international borders or other regulatory obstacles to the free movement of goods, services, persons and capital
- Principle of mutual recognition
  - Any product lawfully sold in one EU country can be sold in all others
- Principles of free movement of goods and services
  - There are no unjustified restrictions of trade between EU Member States

- Exceptions:
  - Permitted derogations (e.g., language, Member State decision on grounds of human health)
  - Mutual recognition: public safety, health, or the environment
  - Free movement: Where justified by non-economic considerations, e.g., public morality, public policy or public security (subject to protection of public interest and principle of proportionality).
  - Different national service rules and complex administrative procedures were identified as the two most serious obstacles to intra-EU trade by service providers

Background – UK post-Brexit

- Grandfathering Provisions – European Union (Withdrawal) Act 2018
  - EU-derived legislation preserved in UK legal framework from 31 December 2020
  - Retained EU law to provide certainty and continuity
  - Approval of regulated products switched to UK bodies
- Internal Market Act 2020
  - Mutual recognition and non-discrimination principles for goods in UK market
  - Modifications in respect of Northern Ireland Protocol
- Retained EU Law (Revocation and Reform) Bill (aka “Brexit Freedoms Bill”)
  - Sunset from 31 December 2023 (or 31 December 2026)
  - BUT Sunset Clause amendments proposed
  - New - Schedule of legislation to be revoked or sunset: https://www.gov.uk/government/publications/schedule-of-retained-eu-law

Reasons for divergence

EU / GB:

1. Continuation of local law requirements in individual Member States
2. EU legislation being revoked or ‘sunset’ in UK (Brexit Freedoms Bill)
3. New or amended EU legislation post-Brexit (not ‘grandfathered’ in UK)
4. New or amended UK legislation post-Brexit
5. Approval and authorisation processes (e.g., substances, novel foods, health claims, food and feed additives, flavourings, GMOs)

Within UK:

1. Northern Ireland – under Northern Ireland Protocol
2. Devolved administrations (subject to Internal Market Act 2020), e.g., DRS

EU/ Northern Ireland

1. Northern Ireland Protocol
2. Impact of Windsor Framework Agreement
3. Stormont Brake mechanism

Known divergences post-Brexit – some examples

- CE and UKCA/ UKNI marking (UK grandfathering amendments)
  - CE shows compliance with EU legislation
  - UKCA shows compliance with UK legislation
  - Transition period – 31 December 2024 (general)
  - Labelling easement – 31 December 2027 (most products)
  - UKNI where certified by a UK notified body for supply in NI (use with CE)
- Chemicals – UK REACH/ EU REACH (UK grandfathering amendments)
  - Grandfathering of relevant EU REACH registrations
  - Comply with UK REACH Service:
    - Submit new registrations
    - Notify – Downstream User Import Notification
    - Transfer of registrations
  - Extension of registration deadlines

Known divergences post-Brexit – further examples

- Plastic Packaging Tax (different EU and UK regimes)
- Deforestation (likely different EU and UK regimes):
  - EU Deforestation and Forest Degradation Regulation
  - UK Environment Act 2021 – Schedule 17
- Food
  - Gene editing / precision breeding – The Genetic Technology (Precision Breeding) Act 2023 (UK change)
  - Ban on titanium dioxide (EU change)
  - Maximum levels of arsenic (EU change)
  - Food Hygiene Regulation (EU amendment)

Further divergence? On the horizon

- General Product Safety Regulation (new EU Regulation) – from December 2024. Includes:
  - Product safety obligations - economic operators and providers of online marketplaces
  - Accident reporting to authorities
  - Specific rules on how to handle product safety recalls, including a mandatory recall notice template, and right to remedy for consumers
- EU Medical Device Regulations (MDR and IVMDR) (EU change / UK change on horizon)
- Extended Producer Responsibility (new UK regime)
  - Producers responsible for full net cost of managing packaging
  - Large organisations (annual turnover of £2 million or more and responsible for supplying or importing more than 50 tonnes of empty packaging or packaged goods in the UK):
    - For the period January to June 2023, report data between 1 July 2023 and 1 October 2023
    - For the period July to December 2023, report data between 1 January 2024 and 1 April 2024
    - 2024 – waste management fee calculate based on packaging reported as ‘household packaging’
    - From 2024 – waste management fee will also vary depending on how easily packaging can be recycled
- PFAS (per- and polyfluoroalkyl chemical substances) - new EU restrictions on entire class
- NB Draft Border Target Operating Model (new UK food import regime from October 2023)
  - Controls on goods entering from EU

Possible implications

- Responsibilities on ‘importer’/ food business operator/ ‘producer’
- Product development
- Market access
- Marking and labelling
- Composition / ingredients
- Additional costs
- Ongoing compliance
- Contractual obligations accordingly

Tools and options for managing risk

SQUIRE PATTON BOGGS

- Awareness (and designation of responsibility for this)
  - Horizon scanning – Trade Associations, trade press, law firm updates
  - Divergence trackers: e.g., UK in a Changing Europe – http://ukandeu.ac.uk
  - Internal briefings and training
  - Consider NI if relevant
- Incorporation in Risk Management Models
- Monitoring (ongoing)
- Lobbying: Regulatory alignment; Resources and data for authorising bodies; and equivalent approval/ authorisation decisions
- Compliance:
  - Adherence to (higher) global standards OR management of different requirements
  - Dual / multi-market marking and labelling
  - Responsibilities on Product stewardship team OR on third parties in supply chain (consider review of contractual obligations)
  - Clear scope for product safety
- Budgets (to meet increased costs)

Questions

SQUIRE PATTON BOGGS

SQUIRE PATTON BOGGS

Final thoughts and Q&A

Rob Elvin – Squire Patton Boggs
4:15pm – 4:30pm

SPB contact details

Rob Elvin
Partner, Manchester
T +44 161 830 5257
E rob.elvin@squirepb.com

Dave Gordon
Partner, Birmingham
T +44 121 222 3204
E dave.gordon@squirepb.com

Nicola Smith
Partner, Birmingham
T +44 121 222 3230
E nicola.smith@squirepb.com

Gary Lewis
Director, Manchester
M 0782 520 4407
E gary.lewis@squirepb.com

Anita Lloyd
Director, Birmingham
T +44 121 222 3504
E anita.lloyd@squirepb.com

Caroline Almond
Director, Birmingham
T +44 121 222 3544
E caroline.almond@squirepb.com

Beth Thompson
Associate, Manchester
T +44 161 830 5220
E bethany.thompson@squirepb.com

Oliver Bristow
Associate, Manchester
T +44 161 830 5332
E oliver.bristow@squirepb.com

Francesca Puttock
Associate, Birmingham
T +44 121 222 3215
E francesca.puttock@squirepb.com