

The Better Business Act and its implications



All the signs are that the pressure to amend [S172](#) of the [UK Companies Act 2006](#) is building strong and fast, with implications for all businesses and their boardrooms. A group of businesses of all sizes launched a campaign at the end of March 2021 to deal a blow to shareholder primacy and make businesses legally obliged to operate in a manner that benefits all stakeholders - including workers, customers, communities and the environment.

Since April the group, which sets out its thinking behind the [Better Business Act \(BBA\) on its website](#), has attracted over 600 members and high-profile support. They include names that will be very familiar to consumers: Innocent Drinks, Danone, the Jamie Oliver Group, the John Lewis Partnership, Triodos Bank, Abundance Investment, Iceland, Patagonia, Ben & Jerry's and more, as well as the business lobbying group the Institute of Directors.

Members have signed up for “a cleaner, fairer and greener future for all” in buying into the need to emphasise the importance of considering stakeholder interests in business decisions. Critically, the BBA would replace S172's guidance for company directors to prioritise the interests of company shareholders as default with one that stresses the need to create a positive social or environmental impact.

Businesses would be asked to put a statement into their annual strategic report with detail on how the company has advanced its stated purpose in consideration of its key stakeholders, the community and the wider environment. This statement in annual reporting is only expected to be required from the larger companies, it suggests.

The campaign behind the BBA is keen to stress that it expects there to be no loss of commercial rigour in the making of decisions on business strategy to come from amending S172. Indeed, it concedes that for many businesses, such an amendment will mean little change in practice to the way in which they currently operate.

But the Act is focused on the need to both clarify and define the purpose of business in society going forward in changing times, “through a more holistic consideration of stakeholder issues.” Amending S172 would give the Companies Act a new principle of fiduciary duty which would no longer be optional and discretionary. The change, it says, “must empower directors” to exercise their judgement in weighing up and addressing the interests of all stakeholders.

While subsection 172(1) of the Companies Act 2006 does allow directors to consider other stakeholders when making decisions, this consideration must through the default lens of shareholder primacy, limiting scope. At the Parliamentary event to launch the report, the BBA campaign looked at the plans for a UK post-pandemic response to “build back better” asking what it amounted to, and this change is seen as a means of giving that direction a focus.

“For many directors, this change in law will not materially affect their behaviours or the action of their companies, but by becoming law it will no longer be a choice to align the long-term interests of people, planet and profit” says the BBA on its website.

In 2018 the UK Corporate Governance Code asked companies to explain their fundamental purpose and values but on a voluntary basis, and within the scope of the 2006 legislation. By then the concept of business as a force for good was already well established with the rise of Certified B corporations, businesses that meet high standards of verified social and environmental performance, public transparency and an ability to demonstrate their balance of profit and purpose. B Lab UK, which provides the campaign secretariat for the BBA, is a not-for-profit established in 2015 to serve a growing community of 500 such companies in the UK.

For businesses and boardrooms, the writing has been on the wall for some time around stakeholder concerns, reputational damage and, as the legislative and regulatory focus sharpens, the very real financial consequences of ignoring environmental social and governance (ESG) issues.

Almost exactly two years ago, Southern Water was hit with a record £126m punishment for spills of wastewater into the environment from its sewage plants and for deliberately mis-reporting its performance. The Environment Agency also launched a criminal investigation into the case. [Media coverage of the story](#) was quick to look at pay levels at Southern Water, presenting an overall picture that was holistic in a manner that cannot have been welcome for its top management. Reputational cost is never completely quantifiable, and it takes a long time to clear.

In its [final decision](#) to impose penalties for misreporting data and endangering stakeholders, Ofwat said: “Our investigation shows that a material number of Southern Water’s wastewater treatment works have faced a wide range of problems, including some over a long period of time... These problems have contributed to the widespread use and adoption of improper practices within Southern Water, including at senior management levels, to present a false picture of compliance. This has been compounded by failings of corporate culture and governance within the company.”

This is a ruling with a holistic view on the priorities of the business as demonstrated by its actions – and it’s the sort of scenario that an amendment to S172 appears designed to avoid, with a shift in the agenda in boardrooms. There are other examples in the annals of recent public corporate disasters, but businesses will not wish to add to them.

Instead, there are many opportunities for boardrooms to grasp by a rethinking of S172, if it becomes a reality. It offers a chance to ensure that there is room for discussion on the agenda about the wider picture on the environmental impact of the business. The consequences of not considering the social impact of company policies from pay to working conditions and terms and more is rising, as a broadening of risk.

Given that the BBA, if agreed, would apply with immediate effect if it comes into force, businesses would be best placed by reviewing current practices for board meetings and the agenda for them. By working through a variety of alternative approaches, boardrooms would be better prepared for a future, the direction of which seems clearer on accountability beyond shareholder primacy.