Market at a Critical Juncture: Evaluating ESG Practices and Challenges in the UK

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Abstract

This article evaluates the approach of the United Kingdom (UK) to environmental, social, and governance (ESG) practices within the broader context of Anglo-American capitalism, emphasizing the "comply-or-explain" governance model. While the UK has pioneered corporate governance reforms, inconsistencies in compliance and underwhelming ESG performance have raised concerns. Comparing the UK's ESG scores and regulatory frameworks with other global players highlights both strengths and shortcomings. Emerging trends, such as litigation by non-government organizations and new disclosure frameworks, suggest a shift towards stricter accountability. This article considers how such measures can address challenges and enhance sustainability. The UK is at a critical juncture—striving to maintain its influence in global finance while facing a decline in its competitive edge and global standing.

Keywords: environmental, social, and governance (ESG); corporate governance; United Kingdom (UK); ESG score; comparative.

[A] INTRODUCTION

The concept of environmental, social, and governance (ESG) began emerging in the early 2000s. It gained prominence in 2004 when the United Nations (UN) Global Compact, in collaboration with the International Finance Corporation, released the report "Who Cares Wins: Connecting Financial Markets to a Changing World" (UN Global Impact 2004). This report formally introduced ESG as a framework for

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integrating sustainability considerations into financial markets and corporate governance. The idea was to encourage investors to incorporate ESG factors into their decision-making processes to drive sustainable business practices. Arguably, it was not the first time that the need arose for companies to conduct their business in a more socially responsible manner. For example, the corporate social responsibility (CSR) pyramid, developed by Professor Archie Carroll (1991), outlines four levels of CSR. At the base is economic responsibility, where companies must be profitable. Above that is legal responsibility, requiring companies to comply with laws. The third level is ethical responsibility, which involves going beyond legal requirements to act fairly. At the top is philanthropic responsibility, where companies voluntarily contribute to societal good through activities like charitable donations and community involvement. This hierarchy reflects a progression from basic obligations to voluntary societal contributions.

The worldwide approaches to ESG (and CSR) regulation vary significantly, reflecting different regional priorities and regulatory environments. As opposed to a more comprehensive and standardized approach in the European Union (EU) as exemplified by its Corporate Sustainability Reporting Directive and the European Sustainability Reporting Standards, elsewhere in the world, it looks much more fragmented. This article delves into the UK's ESG landscape, analysing its regulatory foundation, the performance of its companies as reflected in ESG scores and the comparative standing of its market within a global context. By examining key initiatives such as section 172 of the Companies Act (CA) 2006 and newer frameworks like Sustainability Disclosure Requirements (SDR), this article highlights the strengths and limitations of the UK's approach. Moreover, it explores systemic challenges, including inconsistent compliance, limited enforcement mechanisms, and the declining global relevance of the London Stock Exchange. Against this backdrop, this article considers emerging trends, such as non-governmental organization (NGO)-led litigation and enhanced regulatory measures, as potential pathways for improvement. The analysis underscores the urgent need for a pragmatic strategy to integrate ESG principles into the core of the UK's corporate governance, ensuring its competitiveness in an evolving global economy.

[B] THE ANGLO-AMERICAN MARKET-BASED SYSTEMS AND THEIR TRADITIONAL SHAREHOLDER VALUE APPROACH

The financial systems around the world can be broadly categorized into two types (Allen & Gale 2000). In market-based systems, exemplified by countries like the United States (US) and the UK, participants rely on financial markets, such as stock and bond markets, to dominate capital allocation. In contrast, in bank-based systems, such as those in Germany and Japan, banks play a central role in providing financing and allocating capital. It is believed that market-based systems promote innovation, transparency, and efficiency in resource allocation due to greater competition and market discipline, whereas bank-based systems provide stable, long-term financing and facilitate better monitoring of companies, which is particularly advantageous in economies with less-developed markets. In these two different systems, the focus of the corporate governance is different. As put by Black (2001: 784), within a strong market:

> Strong investor protection produces high prices, which encourage honest companies to issue shares. This increases share prices and encourages more honest issuers to issue shares. Outside investors then generate political support for strong investor protection.

In contrast, with a weak market:

> Most honest companies do not issue shares to the public because weak investor protection prevents them from realizing a fair price for their shares. This decreases the average quality of the shares that are issued, which further depresses prices and discourages honest issuers from issuing shares. Political demand for stronger investor protection is muted by the relative scarcity of outside investors (Black 2001: 784).

It is evident that the path of development varies across countries. The depth of capital markets across countries is not the same. A range of factors may be relevant to capital market development. Prominent economists have produced provocative empirical research which links economic structures to the quality of investor protections provided by national legal systems (eg La Porta & Ors 1998). With respect to the success of Anglo-American capitalism, common law, reflecting a tradition of constraint against governmental authority, may be better suited to a market economy than civil law (La Porta & Ors 1998). Higher quality protections are associated with more dispersed share ownership and larger stock markets. Two explanations with opposite causality may arise accordingly. The "law matters" thesis indicates that a good legal environment protects potential financiers against expropriation by entrepreneurs (eg Milhaupt & Pistor 2008). Investors are willing to surrender funds in exchange for securities and therefore expand the scope of capital markets. Another explanation is that strong laws are a response to the presence of an influential constituency of retail investors, demanding robust jurisdictional oversight (Coffee 1999; Cheffins 2003).

There has been a common assumption in discussions of financial systems that financial markets are the new cutting-edge of financial technology and that countries that lack a highly developed system of financial markets are somehow backward or underdeveloped (Allen & Gale 2000: 127). From the story of Japan and Germany, the two core features of Anglo-American capitalism—namely dispersed ownership and large stock markets—are not necessarily the prerequisites of prosperity (Levine 2002). In fact, advocates of the bank-centred system claim that this structure fosters long-term planning, while a market-based system is said to encourage short-term expectations by investors and responsive short-term strategies by managers (Black & Gilson 1997). Roe (2003) argues that continental social democracies did not provide institutions that securities markets need, such that the markets in continental Europe have flourished to a lesser degree than their Anglo-American counterparts. In social democracies, employees are protected from actions that a company would often take to maximize the shareholder's value.

Adam Smith (1776), widely regarded as the father of modern economics, defined capitalism as an economic system driven by self-interest and competition within a framework of private property and free markets. In his seminal work, *The Wealth of Nations*, Smith (1776) introduced the concept of the "invisible hand", arguing that individuals, by pursuing their own economic interests, inadvertently contribute to the overall good of society. Traditionally, economists like Smith (1776) and Milton Friedman (1970) emphasized profit maximization as the primary objective of a company. John Maynard Keynes (1926), another of the most influential economists of modern times, accepted capitalism as the dominant economic system, but he also criticized *laissez-faire* capitalism for its inability to address social welfare and its propensity to concentrate wealth, thus exacerbating inequality, and therefore advocated for reforms to make it more humane and equitable. The Dodd–Berle debate, in the early 1930s, underlined the potentially diverse purpose and accountability of corporations. Adolf Berle (1931) and Merrick Dodd (1932), both prominent legal scholars, presented opposing views on whether corporations exist solely to maximize shareholder wealth or if they have broader responsibilities.

Berle (1931) argued for shareholder primacy, stating that corporate managers should prioritize maximizing returns for shareholders. He viewed shareholders as the primary beneficiaries of a corporation's activities, asserting that all corporate powers should be used to serve their financial interests. Dodd (1932) opposed this view, advocating a stakeholder perspective. He contended that corporations are more than profit-generating entities; they are social institutions responsible for serving employees, customers, and the broader community. Dodd emphasized that corporations should balance profitability with social contributions, such as job security and community welfare.

This debate remains relevant today. According to a group of leading corporate law scholars, the law also has the function of controlling the conflicts of interests between various constituencies of a company (Armour & Ors 2017). There are three generic agency problems that can arise in companies (Armour & Ors 2017: 29-30). The first type involves the classic agency problem identified by Adam Smith. The problem lies in assuring that the managers are responsive to the shareholders' interests rather than pursuing their own personal interests. The second agency problem involves the conflict between majority and minority shareholders. The former generally have a tendency to expropriate the latter. The third problem lies in assuring that corporate insiders do not behave opportunistically toward outsiders such as creditors, workers and consumers.

The interplay between financial systems, corporate governance, and legal frameworks underscores the complexity of economic development across nations. The ongoing evolution of capitalism, as seen in the integration of stakeholder considerations and debates like Dodd–Berle, highlights the necessity of balancing profit with broader societal responsibilities. This balance is increasingly reflected in the growing focus on ESG principles, demonstrating how financial systems and corporate governance can adapt to address modern challenges while fostering sustainable and inclusive economic prosperity.

[C] THE UK'S ESG REGULATION

The Company Law Review Steering Group (CLRSG) in its 2001 report advocated for a balanced approach to corporate governance, which is reflected in the enlightened shareholder value (ESV) model. The ESV framework aimed to ensure that, while the primary responsibility of company directors was to maximize shareholder value, they should also consider the interests of other stakeholders, including employees, customers, suppliers, and the broader community. This approach was seen as a way to align corporate actions with long-term sustainability, not just short-term profit maximization.

The CLRSG (2001) rejected a more radical pluralist approach, which would have required directors to treat stakeholders' interests as co-equal with those of shareholders. They believed that such an approach would undermine the clarity of directors' duties and lead to excessive litigation. Instead, the ESV model emphasized shareholder primacy while recognizing that long-term shareholder value could be enhanced by considering wider societal impacts. This idea was later codified in section 172 of the CA 2006, though some critics argue that it does not fully capture the spirit of ESV, as the directors' discretion still largely centres on shareholder interests (Keay 2007; Harper Ho 2010; Bebchuk & Ors 2022).

Section 172 is one of the seven general duties of directors in the UK. It requires directors to act in a way that promotes the success of the company for the benefit of its members (shareholders), but they must also consider other factors such as the long-term consequences of their decisions, the interests of employees, the need to foster business relationships, the impact on the environment, and the company's reputation for high standards of business conduct. The provision is designed to balance shareholder interests with broader stakeholder considerations, promoting responsible and sustainable corporate governance. Keay (2013) argues that the implementation of the ESV approach by section 172 lacks clarity and may be difficult to apply in practice. For example, English law is yet to provide definitive guidelines as to when a director's disregard for ESG factors may constitute a violation of section 172. This is despite a raft of case law following the CA 2006 since its enactment.

Therefore, the enforcement of section 172 is largely through a disclosure-based approach. As noted by the CLRSG, "under the [ESV approach], the onus for ensuring good corporate governance amongst the most significant companies inevitably lies with the institutional investors" (UK Government 2003: 36). Under section 414CZA, a section 172 statement is a requirement for companies (except those qualifying for the small and medium-sized companies' regime) to include in their strategic report. This statement explains how the directors have complied with their duty to promote the success of the company for the benefit of its members as a whole, while having regard to various factors as stipulated in the section. According to the Institute of Chartered Accountants in England and Wales (2024), the statement should be authentic, specific, and balanced, explaining both positive and negative matters faced by the company during the year. It should cover stakeholder engagement, the impact of decisions on stakeholders, and the long-term consequences of those decisions.

Apart from mandatory disclosures under the CA 2006, companies may be subject to other different reporting requirements. Streamlined Energy and Carbon Reporting (SECR) is a UK government policy designed to enhance transparency and accountability in energy use and carbon emissions among businesses (UK Government 2019). The primary goal of SECR is to encourage companies to implement energy efficiency measures, which can lead to both economic and environmental benefits. By requiring companies to disclose their energy use and carbon emissions, SECR helps investors and other stakeholders make informed decisions.

SECR applies to listed companies, large unquoted companies, and large limited liability partnerships (LLPs) incorporated in the UK. These entities must include specific information in their annual directors' report, such as UK energy use (including electricity, gas, and transport), associated greenhouse gas emissions (Scope 1[1] and Scope 2[2]), energy efficiency actions taken during the financial year, and an intensity metric that expresses the company's annual emissions in relation to a quantifiable factor like turnover or number of employees. The SECR seeks to identify areas for energy efficiency, reduce carbon emissions to contribute to environmental sustainability, and enhance a company's reputation among customers, investors, and other stakeholders. To comply with SECR, companies must ensure accurate data collection and reporting processes. Non-compliance can result in penalties and damage to the company's reputation.

Other than SECR, the Task Force on Climate-related Financial Disclosures (TCFD) was established by the Financial Stability Board in 2015 to develop recommendations for more effective climate-related disclosures (UK Government 2024a). The TCFD's recommendations focus on four key areas: governance (disclosing governance around climate-related risks and opportunities), strategy (disclosing the impacts of climate-related risks and opportunities on business and strategy),

1 Scope 1 emissions are direct greenhouse gas emissions from sources that are owned or controlled by a company. These include emissions from the combustion of fuels in company-owned vehicles, boilers, and furnaces, as well as process emissions from industrial activities and fugitive emissions from equipment leaks.

2 Scope 2 emissions are indirect greenhouse gas emissions resulting from the consumption of purchased electricity, steam, heat, or cooling. These emissions occur at the facility where the energy is generated but are attributed to the company that uses the energy.

risk management (disclosing how climate-related risks are identified, assessed, and managed), and metrics and targets (disclosing the metrics and targets used to manage climate-related risks and opportunities). The Financial Conduct Authority (FCA) Listing Rule 2024 requires all "equity shares (commercial companies)" (previously divided into premium listed and standard listed companies) to make disclosures under the TCFD framework on a comply-or-explain basis.[3] Since 2022, the types of business entities covered by the recommendations issued by the TCFD has been further extended by the Climate-related Financial Disclosure Regulations 2022. The 2022 Regulations require, in addition to publicly quoted companies, large private companies, banks, insurance companies, and large LLPs in the UK to disclose climate-related financial information in their strategic reports (broadly in line with the TCFD framework).

Apart from environment-related disclosures, companies are required as a legal obligation to make other types of disclosures. A modern slavery statement is a public document that certain organizations are required to publish annually under the Modern Slavery Act 2015 (UK Government 2024b).[4] This statement outlines the steps the organization[5] has taken to prevent modern slavery and human trafficking in their business operations and supply chains. It aims to increase transparency and accountability, ensuring that companies are actively working to combat these issues. The statement typically includes information on the organization's policies, due diligence processes, risk assessments, and training related to modern slavery. Furthermore, under the Equality Act 2010, gender pay gap reporting is a requirement for employers with 250 or more employees (UK Government 2024c). These employers must publish annual data on the pay differences between male and female employees. However, despite the statutory basis of these obligations, it is believed that currently there are no criminal and civil consequences at all for failure to comply with these obligations (Clifford Chance 2016; Shoosmiths LLP 2023). The enforcement powers, for example, by the Equality and Human Rights Commission (2024) are "corrective" in nature.

Meanwhile, voluntary ESG disclosures, while not mandatory, help businesses build trust, demonstrate sustainability efforts, and improve transparency. These disclosures can take various forms, including

[3] Governed by Listing Rule (LR) 9.8.6R(8) since 2021 until 28 July 2024; under LR 6.6.6R(8) in the new Listing Rules.

[4] See also section 54 of the Act.

[5] A commercial organization is required to publish an annual statement if it: (1) is a "body corporate" or a partnership, wherever incorporated or formed; (2) carries on a business, or part of a business, in the UK; (3) supplies goods or services; and (4) has an annual turnover of GBP36 million.

financial reports, sustainability reports, or website content, and can be enhanced by third-party assurance. Standards like the International Sustainability Standards Board, Global Reporting Initiative (GRI), and Task Force on Nature-related Financial Disclosures provide frameworks for businesses to assess and report ESG impacts, with the potential for future mandatory reporting. Adopting these standards now can improve resilience, decision-making, and appeal to investors.

Johnston (2024) argues that the UK corporate governance model has traditionally focused on shareholder value, but there is now a broader recognition of the need for companies to consider their environmental and social impacts. In the process, businesses are facing pressure to adopt sustainable practices due to growing societal expectations and governmental regulations. The UK experience has demonstrated both opportunities and challenges in aligning its corporate sector with global sustainability goals—namely how to best achieve corporate sustainability and how to measure it. Mayer (2024) shares Johnston's view that the law plays a critical role in shaping corporate behaviour and guiding businesses toward long-term sustainable value creation, rather than short-term profits. He emphasizes that businesses should not view ESG as a separate or external concept but integrate it into their core operations and legal strategies. By aligning corporate goals with societal and environmental needs, Mayer suggests that companies can achieve better, more resilient outcomes that benefit all stakeholders, including shareholders, employees, and communities. His analysis stresses that the law must evolve to support this integration, encouraging companies to prioritize responsible practices while maintaining profitability. This shift, he posits, is essential for tackling global challenges and fostering a more sustainable and equitable economy.

MacNeil (2024) highlights the legal uncertainty created by the evolving nature of ESG reporting. This uncertainty arises because the broad, often vague, legal frameworks for fiduciary duty make it difficult to align with the specific demands of ESG, thus complicating businesses' efforts to incorporate ESG principles into their operations. He suggests that clearer regulations may be necessary to ensure businesses are better equipped to navigate the legal landscape. Similarly, Turner (2020) contends that current corporate structures, which emphasize directors' fiduciary duties to maximize shareholder value, can sometimes hinder effective ESG interventions. A solution is to go further than corporate law and governance and rely on the role of international organizations and various legal interventions in shaping corporate behaviour.

Other than a far-from-optimal framework, there are concerns about the law in action. Johnston and Samanta (2024) explore how the UK's Corporate Governance Code 2018 has encouraged companies to engage more with their workforce in alignment with ESG goals. Despite institutional investors' increasing focus on ESG, the authors find limited evidence that these investors push for deeper workforce engagement. They conclude that relying on institutional investors alone may not be sufficient to significantly improve workforce participation in ESG-related decisions. Attenborough (2022) investigates how UK fossil fuel producers report on climate-related risks and their compliance with regulations like the TCFD. The findings highlight the gap between regulatory expectations and actual reporting, with many companies offering limited or vague disclosures. Despite this, Moussa and Elmarzouky (2024) examine the impact of ESG disclosures on the cost of capital for UK non-financial firms from 2014 to 2018. They find that ESG reporting is positively linked to the cost of capital. The research suggests that factors such as firm size and liquidity increase the cost of capital, while governance elements like non-executive directors on audit committees lower it. However, MacNeil and Esser (2022) critique an over-emphasis on the financial model of ESG that prioritizes short-term investor returns, and advocate instead for a holistic entity model that integrates sustainability into corporate governance, operations, and long-term strategy. This shift entails a more comprehensive approach to ESG, considering both financial performance and broader social and environmental responsibilities.

In a nutshell, the UK's corporate governance model, while rooted in shareholder primacy, is gradually evolving to incorporate broader ESG considerations. The legal framework, including the ESV approach and reporting regulations like SECR and TCFD, pushes companies to consider stakeholders and long-term sustainability. However, there are still concerns as to whether companies genuinely embrace more socially and environmentally responsible business practices.

[D] CASE STUDIES

Having talked about the legal framework, this section will turn to how the companies actually applied the law in practice. One way to do so is via an examination of ESG scores. In essence, ESG scores measure a company's performance and risk management practices in three key areas, namely environmental, social, and governance. There is not just a single provider of these scores. Different providers assign ESG scores to companies using their own methodologies. Major providers include MSCI, Sustainalytics (Morningstar), S&P Global, Moody's ESG Solutions, Refinitiv (London Stock Exchange Group), and Bloomberg. In this part, owing to the availability of resources (some of the above require a paid subscription) and the limited space in this article, we will employ the ESG scores provided by Refinitiv (London Stock Exchange Group).

Refinitiv (2022), part of the London Stock Exchange Group, has developed its own methodology for calculating ESG scores. It claims to cover over 85% of the global market capitalisation, across more than 630 different ESG metrics. It collects data from publicly available sources, including company reports, regulatory filings, and news sources. This data is then audited and standardized by its specialists to ensure accuracy and comparability.

The scoring process involves several steps. First, the data is grouped into over 600 measures, categorized into 10 main themes such as emissions, environmental product innovation, human rights, and shareholders. Each measure is presented as a number or a Yes/No response. The importance of each category is weighted according to the company's industry group, using a materiality matrix. For example, the resource use category is more relevant for metals and mining companies than for banking services. Next, the category scores are grouped into three pillar scores—environmental, social, and governance. These pillar scores are also weighted according to the company's industry group. The weighted pillar scores are then combined to form the overall ESG score, representing the company's relative ESG performance. Additionally, Refinitiv calculates a controversies score based on negative media stories and controversies involving the company. This score is used to adjust the overall ESG score, resulting in the ESG combined (ESGC) score.

As of 12 December 2024, out of the 1476 companies listed and headquartered in the UK, Refinitiv recorded the ESG scores of 608 of these companies. Out of the top 10 performing companies, AstraZeneca leads with a score of 94.27, followed by Shell at 91.35 and Standard Chartered at 90.94. Unilever and GSK also have high scores of 89.82 and 89.33, respectively. Linde, British American Tobacco, and Mondi have scores ranging from 88.81 to 87.72. Pearson and BP round out the list with scores of 87.24 and 86.44, respectively. See Table 1 for these data. The companies listed are prominent players in various industries. AstraZeneca and GSK are leading pharmaceutical companies known for their innovative medicines and vaccines. Shell and BP are major players in the oil and gas industry, focusing on energy production and distribution. Standard Chartered operates in the financial services sector, providing banking and investment services. Unilever is a multinational consumer

Company Name	ESG Score	Company Name	ESG Score
AstraZeneca plc	94.27	Enwell Energy plc	7.67
Shell plc	91.35	Colefax Group plc	8.33
Standard Chartered plc	90.94	EKF Diagnostics Holdings plc	8.42
Unilever plc	89.82	Daniel Thwaites plc	9.20
GSK plc	89.33	Netcall plc	9.33
Linde plc	88.81	Dewhurst Group plc	9.55
British American Tobacco plc	88.72	Heathrow Finance plc	10.18
Mondi plc	87.72	London Security plc	10.90
Pearson plc	87.24	SOUND ENERGY PLC	11.03
BP plc	86.44	KORE POTASH PLC	11.17

Source: Refinitiv.

Table 1: The winners and losers of ESG (according to Refinitiv).

goods company, producing a wide range of products from food to personal care. Linde is a global leader in industrial gases and engineering. British American Tobacco is a major tobacco company, producing cigarettes and alternative nicotine products. Mondi specializes in sustainable packaging and paper solutions. Pearson is an education-focused company, that provides educational materials and services.

By contrast, at the bottom of the table, the 10 worst performers just managed to get a mean score of 9.58 (compared to the top 10's 89.46). Enwell Energy scored the lowest at 7.67. Colefax Group and EKF Diagnostics Holdings follow with scores of 8.33 and 8.42, respectively. Daniel Thwaites and Netcall have scores of 9.20 and 9.33. Dewhurst Group and Heathrow Finance scored 9.55 and 10.18. London Security and Sound Energy have scores of 10.90 and 11.03. Kore Potash rounds out the list with the highest score of 11.17. Again see Table 1 for these data. Amongst these companies, they operate in various sectors. Enwell Energy focuses on gas and condensate field development in Ukraine. Colefax Group designs and distributes luxury furnishing fabrics and wallpapers. EKF Diagnostics Holdings is a diagnostics company engaged in point-of-care testing and enzyme manufacturing. Daniel Thwaites is a family brewer with a presence in Northern England, also managing properties and pubs. Netcall specializes in communications and business process management software. Dewhurst Group develops electrical components, especially for the lift market. Heathrow Finance is part of Heathrow Airport Holdings, managing the financial operations of Heathrow Airport. London Security provides fire protection services across Europe. Sound Energy is involved in the exploration and production of natural gas in Morocco. Kore Potash focuses on potash production, primarily in the Republic of the Congo.

AstraZeneca (2025a) is considered a champion of ESG due to its sustainability initiatives. The company has made significant strides in reducing its environmental footprint, achieving a 67.6% reduction in Scope 1 and 2 greenhouse gas emissions since 2015. AstraZeneca (2025a) is also committed to increasing access to healthcare, having reached 66.4 million people through its healthcare programmes. Additionally, the company promotes ethical practices and transparency across its value chain, ensuring that its operations are inclusive and diverse (AstraZeneca 2025a). These efforts are detailed in its annual sustainability reports, which highlight its progress and commitments. Despite these achievements, the company has not been immune to ESG-related scandals over the years. For instance, the company was involved in the Thalidomide tragedy in the 1960s, where a drug it manufactured caused severe disabilities and deaths among infants (Corporate Watch 2021). The company has also faced allegations of bribery and unethical marketing practices (Corporate Watch 2021). More recently, the scandal of AstraZeneca related to Covid-19 vaccines (Dyer 2023). AstraZeneca faced significant controversy regarding its vaccine, Vaxzevria. The primary issue was the rare but serious side effect of vaccine-induced thrombotic thrombocytopenia, a condition involving blood clots and low platelet levels. This led to legal actions from patients and families who suffered severe injuries or lost loved ones due to the vaccine (Dyer 2023).

Meanwhile, at the other end of the scale, Enwell Energy, an oil and gas company operating in Ukraine, has faced significant ESG-related challenges, primarily due to regulatory and ownership issues. In December 2022, Enwell Energy's major shareholder, Vadym Novynskyi, was sanctioned by the Ukrainian Government. These sanctions led to regulatory scrutiny under Ukraine's natural resource laws, including the suspension of key licences such as the VAS and SC fields in 2023 (NASDAQ 2024). Furthermore, Ukraine introduced new legislation in 2023 (Law No 2805-IX), requiring transparency regarding the ultimate beneficial ownership of companies operating in the natural resource sector. Enwell Energy (2024a) faced compliance challenges, including the suspension of licences and the risk of further actions due to incomplete ownership disclosures.

In terms of corporate governance (one of the three main pillars of ESG), apart from disclosure and transparency,[6] other key issues of concern include the responsibilities of the board[7] and the gatekeeper role played

[6] G20/OECD Principles of Corporate Governance 2023, IV.

[7] Ibid, chapter V; UK Corporate Governance Code 2024, sections 1 and 2.

by the institutional shareholders.[8] On the former, as put by Principle A of the UK Corporate Governance Code, "a successful company is led by an effective and entrepreneurial board, whose role is to promote the long-term sustainable success of the company, generating value for shareholders and contributing to wider society". Under Principle L of the Code, an annual evaluation of the board should be undertaken to consider its performance, composition, diversity and how effectively members work together to achieve objectives. For AstraZeneca, an independent evaluation of the board and its committees' performance was carried out in 2024 by Christopher Saul Associates, an independent, external corporate governance advisory firm. According to this independent evaluation, AstraZeneca's (2025b: 99) board remains effective, demonstrating strong leadership, a collaborative approach, and high professional standards, supported by quality resources; and its committees are diligent, efficient, and closely aligned with the board's overall operations. Meanwhile, in the case of Enwell Energy (2024b: 43), the company has stated that, "[its] Board has not considered it necessary to undertake an external assessment of the Board performance and effectiveness". Indeed, on a more careful inspection of the company's most recent annual report, it can be seen that the attendance record revealed a mixed level of engagement among board members. Several members demonstrated full commitment by attending all 20 meetings in 2023. However, its two non-executive directors, Alexey Pertin and Yuliia Kirianova, attended only one and 10 meetings respectively, which inevitably raises concerns about their level of commitment (Enwell Energy 2024b: 42). As noted by the Financial Reporting Council (2024a: 29), "over-boarding"[9] can be a concern for non-executive directors.

As regards the gatekeeping role of institutional investors, AstraZeneca's ownership is pretty diverse with 53.22% of the company's shares held by 928 institutions.[10] Comparatively, Enwell Energy's ownership is concentrated in the hands of insiders (82.71%), with only one institutional shareholder holding 6.95% of shares.[11] As per Principle 1 of the UK Stewardship Code 2020, the institutional investors have a stewardship function to "create long-term value for clients and beneficiaries leading to

[8] G20/OECD Principles of Corporate Governance 2023, chapter III; UK Stewardship Code 2020; Myners 2001.

[9] Over-boarding refers to a director who is perceived to be sitting on an excessive number of boards which can result in an under-commitment of time and attention.

[10] Data from Yahoo! Finance.

[11] Ibid. Pelidona Services Ltd is the majority shareholder and is a limited company registered in Cyprus. According to a 2019 disclosure, Pelidona was 100% owned by Lovitia Investments Ltd, which was 100% owned by Vadym Novynskyi, a Ukrainian businessman. See Enwell Energy (2019).

sustainable benefits for the economy, the environment and society". In the case of AstraZeneca, institutional investors have certainly played a role in the company's corporate governance by influencing key decisions through their voting power and engagement with the company's board. A notable instance occurred when AstraZeneca proposed an increase in CEO Sir Pascal Soriot's remuneration to £18.5 million (Hill 2024). This proposal faced opposition from proxy advisory firms like Institutional Shareholder Services and Glass Lewis, who recommended that shareholders vote against it, citing concerns over the scale of the bonuses, which could exceed 1000% of his base pay.

Going back to the top 10, some of them have been subject to major environmental setbacks. The Deepwater Horizon oil spill, also known as the BP oil spill, was a catastrophic environmental disaster that began on 20 April 2010 (US Environmental Protection Agency 2024). It occurred in the Gulf of Mexico, approximately 41 miles off the coast of Louisiana, when an explosion on the Deepwater Horizon oil rig caused a massive blowout. The rig, owned by Transocean and leased by BP, sank two days later, leading to the largest marine oil spill in the history of the petroleum industry. Over the course of 87 days, an estimated 4.9 million barrels (210 million gallons) of oil were discharged into the Gulf of Mexico (US Environmental Protection Agency 2024). The spill had devastating effects on marine and coastal ecosystems, killing thousands of marine animals, including birds, fish, and sea turtles. The oil also contaminated vast areas of the Gulf, affecting the livelihoods of local communities dependent on fishing and tourism. Efforts to contain and clean up the spill involved multiple strategies, including the use of dispersants, skimming, and controlled burns. Despite these efforts, the environmental and economic impacts of the spill were profound and long-lasting. BP faced significant legal and financial repercussions, including a record-setting USD5.5 billion Clean Water Act penalty and up to USD8.8 billion in natural resource damages (US Environmental Protection Agency 2024).

Another top 10 performer, Shell, was the subject of a recent UK Supreme Court case.[12] The case involves claims brought by approximately 40,000 Nigerian citizens from the Niger Delta against Royal Dutch Shell and its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Ltd (SPDC). The claimants allege that oil spills from SPDC's pipelines caused significant environmental damage, contaminating water sources and affecting their health and livelihoods. The central issue in the case is whether the UK-domiciled parent company, Royal Dutch Shell, owes

[12] *Okpabi and Ors (Appellants) v Royal Dutch Shell plc and Another (Respondents)* (2021).

a duty of care to the individuals affected by the actions of its Nigerian subsidiary. The claimants argue that Royal Dutch Shell exercised significant control over SPDC's operations and assumed responsibility for them, thus making Royal Dutch Shell liable for the environmental damage caused. In February 2021, the UK Supreme Court ruled that it was at least arguable that Royal Dutch Shell owed a duty of care to the claimants, allowing the case to proceed in the English courts. This decision marked a significant development in parent company liability, emphasizing that companies cannot rely solely on the separate legal personality of corporations to limit their responsibilities for the actions of their subsidiaries.

Whilst the case of Enwell Energy demonstrated the governance risk, and those of BP and Shell demonstrated the environmental risks, the Post Office IT scandal demonstrated the social risk for companies. The Post Office, which is a state-owned retail post office company in the UK and operates as a private limited company, provides a wide range of postal and non-postal related products and services. Perhaps due to the fact that it is a private limited company, Refinitiv has not traced the ESG performance of the Post Office. In recent years, the Post Office has been involved in the Horizon IT scandal, where faulty accounting software led to the wrongful prosecution of over 900 sub-postmasters for financial crimes. This has been described as the biggest single series of wrongful convictions in British legal history, leading to a public inquiry and ongoing efforts to provide compensation and support to the victims (Payne 2024).

In conclusion, while ESG scores are often touted as a comprehensive measure of corporate sustainability and ethics, they are far from perfect. The variability in methodologies among providers, such as Refinitiv, raises questions about the consistency and reliability of these scores (eg Kotsantonis & Serafeim 2019). High-performing companies like AstraZeneca and Shell, despite their ESG accolades, still face serious controversies, ranging from environmental disasters to legal challenges. ESG scores may offer a useful starting point for evaluating corporate behaviour, but their reliance on self-reported data and the absence of a standardized framework often obscure deeper systemic issues. These limitations suggest that ESG metrics should be used with caution, complemented by critical analysis to avoid superficial assessments of corporate responsibility.

[E] THE IMPLICATIONS OF THE UK EXPERIENCE TO THE WORLD

The previous part has given a glimpse of the company-level performance of ESG in the UK. This part will seek to give an evaluation of it as a jurisdiction/country, see how it fares against fellow competing countries, and eventually reflect on its strengths and shortcomings. Again using the ESG scores from Refinitiv, this part will start by making a comparison between the UK and five other selected countries (the US, France, Germany, Singapore and Hong Kong).

According to Refinitiv's database, as of 12 December 2024, according to their country of domicile, the UK has 608 listed companies with recorded ESG scores, averaging 48.24. In Europe, France reports 188 scores with an average of 59.41, while Germany has 276 scores averaging 51.95. In Asia, Hong Kong lists 171 scores with an average of 55.17, and Singapore records 106 scores with an average of 50.53. In the US, due to the large number of companies, scores are split by stock exchange. Companies listed on the New York Stock Exchange (1381) have an average ESG score of 49.53, while those on NASDAQ (1711) average a lower score of 35.93. See Table 2 for a summary.

Country	Companies (Number)	Mean ESG Score
UK	608	48.24
France	188	59.41
Germany	276	51.95
Hong Kong	171	55.17
Singapore	106	50.53
US (NYSE)	1381	49.53
US (NASDAQ)	1711	35.93

Source: Refinitiv.

Table 2: Mean ESG scores of companies (according to country of domicile) as of 12 December 2024.

It can be seen from Table 2 that UK companies as a whole are not performing as well as their foreign counterparts. But it is worth highlighting that US-headquartered companies listed on NASDAQ returned particularly low ESG scores compared to other companies. To account for the difference, it may be useful to compare their ESG frameworks. The Sustainable Stock Exchanges Initiative (2024a) maintains a database of key stock exchanges regarding whether their guidance documents refer to any of the six main reporting instruments, namely the GRI, Sustainability

Accounting Standards Board, International Integrated Reporting Council, Carbon Disclosure Project, TCFD, and Climate Disclosure Standards Board (CDSB). These are among the most widely used and recognized frameworks for sustainability reporting and climate-related disclosures.

The London Stock Exchange, Euronext Paris, and NASDAQ in their ESG guidance documents to their listed companies made references to all six of the instruments. Meanwhile, the German Deutsche Börse made references to four only (omitting TCFD and CDSB). New York Stock Exchange, Hong Kong and Singapore referred to just three. A more relevant indicator perhaps will be whether ESG reporting is required as a listing rule. For Euronext Paris, Hong Kong and Singapore, they are reported as "yes" by the Sustainable Stock Exchanges Initiative (2024b), whilst the other three as "no". Seemingly this indicator may better account for the performance of the countries in Table 2.

It can be seen that the UK (and the US) experience in ESG regulation is not actually that impressive compared to its peers. It takes us back to the discussion earlier that Anglo-American capitalism has been closely tied with its shareholder value approach. The UK has been widely regarded as a pioneer in corporate governance by first putting forward a comply-or-explain approach.[13] According to the Organisation for Economic Co-operation and Development (OECD) (2023: 40), a majority of the corporate governance systems of major economies around the world follow this ground-breaking, non-binding, soft law, comply-or-explain approach. As recognized by the Financial Reporting Council (2024b), this approach "offers flexibility, and it encourages companies to choose bespoke governance arrangements most suitable to their particular circumstances in both the short and long term". However, the downside of it is compliance. In reviewing the annual reports of 130 companies, the Financial Reporting Council (2024a) discovered that between the period of 2021 and 2024, only a minority of companies would fully comply with the UK Corporate Governance Code. That means a majority of them would disclose a departure from at least one code provision. This is not a concern for the Financial Reporting Council (2024a) as it expects that "instead of demanding strict adherence … it is vital that, shareholders, service providers and other stakeholders support the flexibility of the provisions and do not anticipate complete compliance". Whilst the Financial Reporting Council (2024a) generally acknowledges that "reporting on engagement [with stakeholders] is generally high quality", Grant Thornton (2024) has

[13] See the Cadbury Report (Cadbury 1992).

painted a more worrying picture that 15% of the 252 companies surveyed by it did not comply or explain in 2023.

Under the comply-or-explain regime, enforcement by the Code is down to the market, specifically the institutional investors. Armour (2010) highlighted three key features about the UK corporate governance enforcement model: the rarity of shareholder lawsuits, indicating minimal formal private enforcement; the predominance of public enforcement, with agencies like the Takeover Panel and the Financial Conduct Authority using suasion rather than sanctions; and the significant role of institutional investors in informal private enforcement, compensating for the weak formal private enforcement. Myners (2001) even went further by recognizing the highly developed equity culture and the professionalization of investment in the UK as “key national assets”. The strength of the institutional investors in the UK has been largely connected to London’s reputation as one of the most elite international financial centres.[14] However, there are signs that London’s eminence is in danger of slowly sliding into irrelevance. One is its size. The London Stock Exchange is now just the ninth largest stock exchange in the world, sandwiched between newcomers like the National Stock Exchange of India (at eighth) and the Saudi Exchange (at 10th).[15] In a ranking for fundraising from initial public offerings, London even slipped to 20th place behind countries like Oman, Turkey, Malaysia and Poland (Bow & Price 2024). All these can have detrimental effects on London’s market. Fewer listings and declining investor interest have led to lower liquidity in the London market. A less liquid market becomes less appealing, further compounding the problem. Fund managers are increasingly directing investments to the US, where markets are seen as more dynamic and profitable (Bow & Price 2024). The underperformance of the UK market drives investors away, which in turn leads to further underperformance. This “doom loop” creates a dangerous spiral that undermines London’s role as a global financial hub.

In the absence of the “market” or strong institutional investor body to police the companies, there may be other ways to preserve the integrity of the ESG regulatory system in the UK. The case of *ClientEarth v Shell* (2023) may represent a new way of enforcement (Iglesias-Rodríguez 2023). ClientEarth, an environmental law charity, brought a derivative action against Shell’s board of directors in the High Court of England and Wales. The claim alleged that the directors had breached their legal duties by failing to adequately address climate risks in their sustainability

[14] See eg the Global Financial Centres Index compiled by Z/Yen Partners.

[15] Data from the World Federation of Exchanges.

strategy. The case was notable because it was one of the first instances where a shareholder used a derivative action to hold corporate directors accountable for their handling of climate change risks. The High Court rejected ClientEarth's application for permission to bring the derivative claim at the end. Despite the dismissal of the claim, the case highlights the growing trend of litigation brought by NGOs and activist investors to challenge companies' responses to climate-related risks.

Another positive development is the UK's continuing efforts to step up its ESG regulatory efforts. One example is the planned SDR framework, which aims to enhance transparency and accountability in corporate sustainability practices (UK Government 2024d). It includes corporate, financial product, and taxonomy disclosures, supporting the UK's goal to become a Net Zero Aligned Financial Centre. The framework builds on global standards, with the UK Sustainability Reporting Standards expected in 2025. The FCA will require UK-listed companies to disclose against these standards, with potential obligations for non-listed companies from 2026. The SDR framework is designed to facilitate the flow of robust, decision-useful information between corporates, consumers, investors, and capital markets. The framework is built on the progress made on existing sustainability standards, including the launch of the International Financial Reporting Standards Foundation's International Sustainability Standards Board baseline standards.

In summary, the UK faces significant challenges in its ESG performance at both the corporate and country levels. Despite being widely recognized as a pioneer in corporate governance, the flexibility of this approach has resulted in inconsistent compliance among companies. Coupled with the declining stature of London as a premier global financial hub, the UK risks losing its competitive edge as a "global standard setter".

[F] CONCLUSION

The UK's ESG framework clearly stands at a critical juncture, reflecting both the legacy of its shareholder-driven governance model and the increasing demands for sustainability and corporate accountability. To remain competitive, it must release the stalemate between its historic comply-or-explain approach and the dynamic developments of modern economy, shifting towards a more rigorous and enforceable ESG regime. Two key takeaways must be understood to enable future improvement.

First, the current approach risks inconsistent application and weak enforcement. Comparative analyses with countries such as the US and

France highlight the UK's struggle in aligning its ESG performance with global best practices, whilst at the same time seeking to defend its position as a global financial hub. Emerging developments, such as the planned SDR framework together with high-profile litigation like *ClientEarth v Shell*, signal a gradual shift towards stricter ESG accountability. These efforts indicate a growing recognition of the need for robust measures that go beyond non-binding soft law disclosures. However, addressing systemic issues, such as the erosion of the London Stock Exchange's global standing, declining investor confidence, and underwhelming corporate ESG scores, requires a more transformative approach. Consequently, the UK's ESG infrastructure must be supported by stronger legal obligations, clear reporting standards and consistent regulatory oversight.

Second, and crucially, the UK must strike a pragmatic balance—enabling innovation and growth while at the same time embedding more robust ESG enforcement measures in its overall framework—the two are not, and nor should they be, mutually exclusive. Here, aligning corporate practices with global ESG standards ensures parity in a global market and allows the UK to have the best of both worlds—safeguarding its reputation as a leading financial centre while contributing to a more sustainable and inclusive global economy.

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