

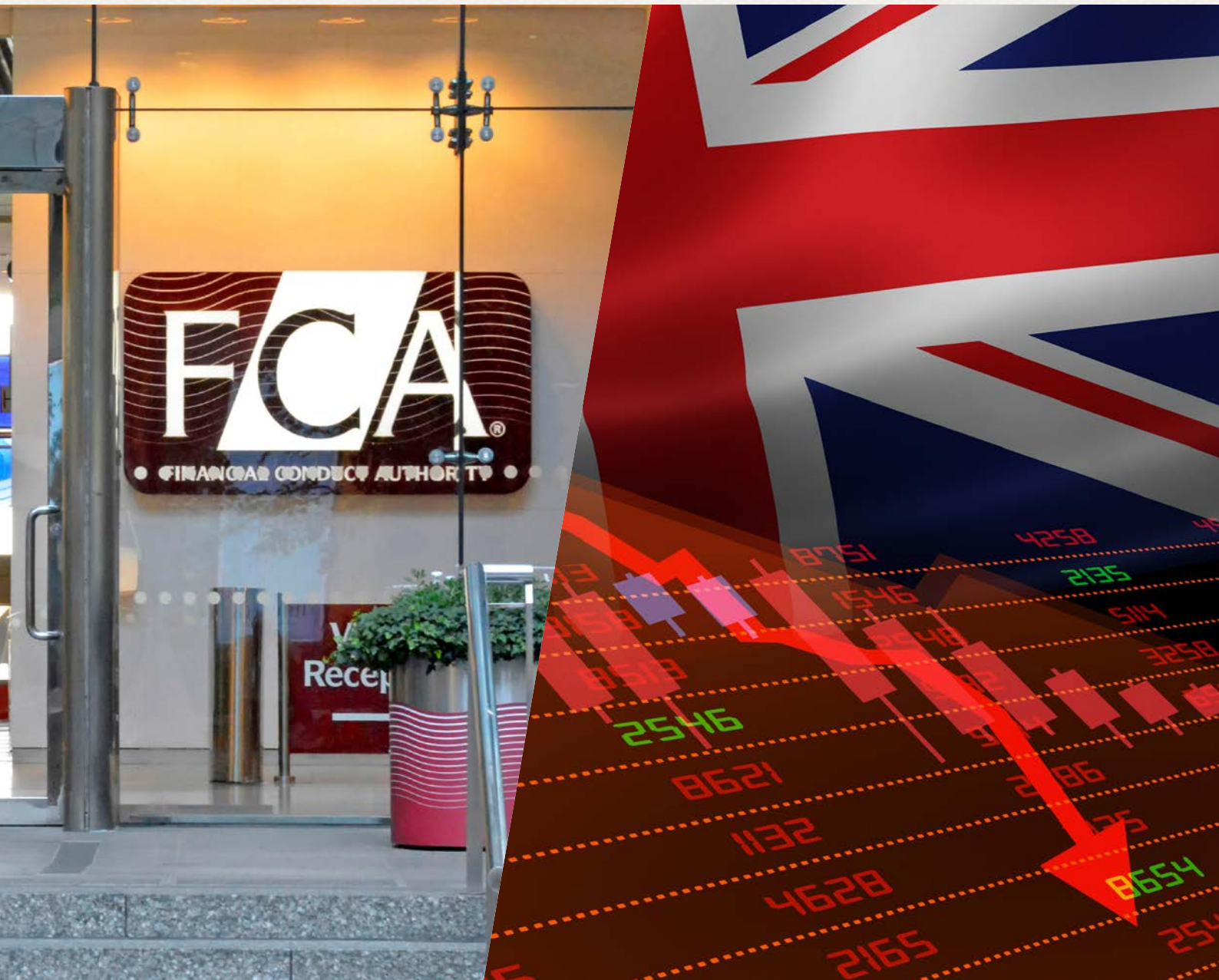


LEGATUM  
INSTITUTE

British Prosperity Unit

# Woke Capitalism in Britain: Diagnosis, Prognosis and Cure

Fred de Fossard





# Contents

---

About the Author .....	3
Foreword .....	4
Proposals endorsed by .....	7
Executive Summary and Summary of Recommendations .....	8
1. Introduction .....	12
 <b>Part I: Diagnosis</b>	
The Origins and Drivers of Woke Capitalism .....	15
2. Asset Managers, Pension Funds and Investment Banks .....	16
3. Primary Legislation .....	25
4. Regulation .....	27
 <b>Part II: Prognosis and Cure</b>	
Reversing the Damage Done by Woke Capitalism .....	41
5. The Social and Economic Cost of Woke Capitalism .....	42
6. Conclusion and Policy Recommendations .....	46
 Appendix .....	
Bibliography .....	55

# About the Author

---

Fred de Fossard is Director of Parliamentary Affairs and Head of the British Prosperity Unit at Legatum Institute. He is grateful for advice and contributions from legal and subject area experts for the preparation of this paper.

# Foreword

---

## **Rt Hon Sir Jacob Rees-Mogg MP**

While the American economy has grown handsomely over the last decade, the British and European economies have stagnated. Few have looked over the Atlantic to wonder why the United States has seen such an economic boom since the financial crisis and what can be learnt. The answers might be uncomfortable for many in the UK, as they challenge many of the orthodoxies of our economy.

While the US boasts a huge domestic market, abundant natural resources, and the world's reserve currency, it has also worked out how to use these advantages better than Britain and Europe. Indeed, it had all three of these advantages in the 1990s and 2000s, when British living standards were competitive with America, thanks to the legacy of Margaret Thatcher and Nigel Lawson's economic reforms in the 1980s.

Today, however, Britain is suffocating its economy in regulation and poor incentives, which is sapping dynamism and risk-taking to the detriment of our prosperity and national interest. On top of the growth of the regulatory state, today we also have what amounts to "woke capitalism", economic policy and practice pushed by government, regulators, and big business. The ideologies of "diversity, equality and inclusion" (DEI) and "environmental, social and governance" (ESG) practices are a threat to British liberty, prosperity, and national interest. In effect, "woke capitalism" has placed an additional ideological layer on top of an already burdensome regulatory regime, and this ideology is shaping regulators' and government policy.

To increase prosperity for our nation, we must free our economy to unleash human agency and innovation.

## **Protecting the jewel in the crown**

Britain has one of the world's most sophisticated and successful financial services economies. Since the deregulations of the 1980s, the City of London and Canary Wharf have, together, powered much of the British economy. They have provided finance to new technologies and innovative businesses, and the financial services sector provides over 10 per cent of Britain's tax revenue and accounts for over 3% of the country's gross domestic product alone.<sup>1</sup>

This is the jewel in the crown of the British economy. Any discussion of trying to "rebalance" the British economy should not ignore that all nations should maximise their strengths wherever possible. In Britain's case, financial services and associated top-level professional services have helped restore the United Kingdom to the status of the fourth-largest exporter of goods and services in the world this year. It is in the interests of all that Britain has the most prosperous,

---

1. TheCityUK. (2023). Key facts about UK-based financial and related professional services 2023 [PDF]. Available at: <https://www.thecityuk.com/media/vbhjnbmx/key-facts-about-uk-based-financial-and-related-professional-services-2023.pdf> (Accessed: May 8, 2024).

dynamic, and competitive financial services sector possible.

However, we have a problem. Britain's two financial services regulators—the Financial Conduct Authority and the Prudential Regulation Authority—are in danger of eroding Britain's competitive edge in financial services, and British prosperity. As this paper by Legatum Institute shows, the regulators have also embraced the tenets of “woke capitalism” in regulating the industry, adding another layer of ideologically-driven regulation and governance.

Last autumn, regulators announced consultations on implementing DEI policies into their rules for all regulated businesses. If introduced, these policies could expand reporting requirements around gender and ethnic diversity in hiring, and diversity targets in hiring and promotion decisions.

This would be an extraordinary and damaging move. It is anti-meritocracy and opposes freedom of association. Such policy should only be enacted with Parliamentary consent. It is doubtful that it is even within the FCA's statutory objectives to secure an appropriate degree of protection for consumers, to protect and enhance the integrity of the UK financial system, and to promote effective competition in the interests of consumers.

The problems don't stop there. The Government is committed to supporting green ventures that would not stand independently without regulatory preference or subsidy. For example, the Competition and Markets Authority is relaxing antitrust enforcement rules for green enterprises. The Government is introducing mandatory climate-related disclosures to businesses and will attempt to encourage other regulators worldwide to copy them.

## **Woke capitalism harms national security**

One of the most pernicious aspects of the growth of ESG culture in regulators and investment has been the way it has harmed the defence sector. Since the war in Ukraine, the British Government has provided over £7.1 billion-worth of military aid to Ukraine. This has had huge consequences for Britain's defence industry, affecting the entire supply chain of businesses manufacturing arms, from missiles and ammunition to tanks and air defence systems. However, Britain's defence sector and Western security are being put at risk by ESG rules. Many small businesses in the defence supply chain have had their bank accounts closed down, and larger ones have been struggling to raise capital due to ESG rules, which downgrade the investment prospects of the defence sector. Woke capitalism is putting British national security at risk.

This is not a recipe for prosperity. Instead, it attempts to regulate the global economy and force businesses worldwide to become arms of state political entities rather than the private enterprises we know them to be.

As this paper argues, the Government should use its legal powers to reset the reporting requirements for all businesses and strip them back to the governance standards we have known for decades. The paper also recommends expanding the prohibition on de-banking consumers to include legal companies to stop the defence industry from being penalised by harmful regulations.

By clarifying the statutory objectives of these regulators and removing onerous and superfluous burdens from British businesses, we can restore common sense to British industry and let

entrepreneurs and CEOs get on with what they do best: growing a business, serving their customers, creating jobs, and making a profit. The whole country benefits from this. We do not need state-imposed diversity mandates or green wheezes to be prosperous.

## Political importance

The right regulations can unleash prosperity. The wrong ones can kill it. With a general election looming, the stakes are rising. There is growing momentum on the British left for an increase in business regulation, especially in the DEI and ESG sphere. The "Better Business Act" campaign, established by the B-Corp movement, seeks to make all businesses follow ESG principles, and the Labour Party's proposed Race Equality Act would embed divisive racial identity politics in the workplace, directly attacking meritocracy and freedom of association.

Today's Labour Party is little changed from the party which destroyed British pensions when Gordon Brown was chancellor. Instead of conducting tax raids on pension funds, Brown's successor, Shadow Chancellor Rachel Reeves, will destroy the public's investments and savings through regulation and woke capitalism. By gold-plating ESG rules and forcing pension funds and asset managers to make investments in poorly-performing ESG projects, a prospective Labour government will damage British prosperity and the livelihoods and retirements of the British people.

This paper by the Legatum Institute offers the solution. It can be achieved efficiently, taking little government and parliamentary time. They would restore Britain's advantages in financial services and business regulation and ensure we do not follow the European Union on its path to economic ossification.

## Proposals endorsed by

---

*"This Legatum Institute paper offers a clear description of the damage that bad regulation does to British prosperity. Despite some being introduced with good intentions, ESG regulations and practices have made British businesses less competitive, and divert their valuable money into time-consuming reporting requirements, and meeting political goals. This is not good for business, nor is it good for the economy.*

*If the government is serious about making sure British businesses can grow, and the public can get the best value out of their pensions and their savings, they should enact the recommendations in this paper immediately."*

- Rt Hon Ranil Jayawardena MP, Chairman of the Conservative Growth Group.

*"The new Legatum Institute paper shows the damage that ESG and woke capitalism is doing to the economy, harming British businesses of all sizes. If we want to get the economy growing, and find a competitive advantage over the European Union, we must get rid of ESG reporting rules, focus our regulators on innovation and growth, and stop British businesses from getting de-banked for political and ESG reasons. We cannot risk the Labour Party harming our voters pensions, savings, and jobs."*

- Brendan Clarke-Smith MP.

*"Whether it's high finance, light industry, or small business, socialist rules and regulations crush economies. Woke capitalism distorts markets and leaves us with powerful corporate giants on the one hand, and tiny businesses on the other, with nothing in between.*

*This Legatum Institute report shows us the problem, but most importantly it shows us the solutions. I wrote to the Chancellor to criticise the Financial Conduct Authority's decision to force gender ideology and diversity rules on private companies. This paper shows how Ministers can stop this from happening, using existing legal powers. I urge them to follow these recommendations, and stop the damaging growth of woke capitalism in its tracks."*

- Nick Fletcher MP.



# Executive Summary and Summary of Recommendations

---

For some commentators, 2023 was the year in which woke capitalism faced a reckoning at the hands of a global backlash against environmental, social and governance-centred investing (ESG). Criticism of woke capitalism characterised two US Republican Party presidential primary campaigns. It is seen in a slew of anti-ESG bills moved by state legislatures. Money is starting to trickle away from ESG-marked exchange-traded funds, and major asset managers are concerned about the label's public relations value. The latest academic research has also found that firms with high ESG ratings are significantly more likely to be financially distressed than firms which do not have high ESG scores.<sup>2</sup>

While recognising the progress that has been made, this report argues that several crucial areas of the problem of woke capitalism remain unresolved. It also takes pains to distinguish the situation in Britain from America, which has a significantly different cultural and legal context. It counsels caution in relation to claims that the ESG industry is dying or was inevitably doomed from its inception. In particular, it warns against the apparent enthusiasm for embedding the ideas behind woke capitalism into law, just as the market suggests that ESG is not the economic goldmine its supporters suggested.

The paper examines the philosophical development of woke capitalism, and how it took root in both the public and private sectors in a mutually self-reinforcing way. It highlights how a culture of political risk-management has developed hand in hand with ESG-driven regulations and rules around diversity and inclusion. This has created a situation where "debanking", the restriction of funding to businesses with poor ESG scores, and shareholder activism, drives woke capitalism in the private sector, and laws and regulations like the Equality Act 2010, duties in the Companies Act 2006, and actions of regulators and government departments entrench it in the state.

Particular attention is given to the actions of the UK's financial regulators, which have served as a motor of progressive change. This poses a great danger to British prosperity, as while there has been a backlash against ESG policies in the United States, Britain's regulators are still committed to them, and are facing little scrutiny from Parliament.

As well as the financial regulators, woke capitalism is also driven by the Competition and Markets Authority, and compliance codes published by organisations like the Financial Reporting Council. It is evident that once businesses reach a certain size, they must grapple with a huge swathe of regulations designed to increase diversity and achieve Net Zero. This is inimical to economic growth and prosperity, and creates an economy made up of large incumbents and uncompetitive small businesses.

The effects are not just limited to businesses. They damage society in a number of ways. This includes spreading polarising identitarian rhetoric and exposing children to adult sexual

---

2. Lohmann, Christian and Möllenhoff, Steffen and Lehner, Sebastian, On the Relationship between Financial Distress and ESG Scores (March 7, 2024). Available at SSRN: <https://ssrn.com/abstract=4751503> or <http://dx.doi.org/10.2139/ssrn.4751503>



behaviour and gender theory, as well as the dissipation of funds to parasitic bureaucracies and uneconomic enterprises, at the expense of British defence companies, for example. This is not a recipe for a prosperous or happy society.

The conclusion draws attention to the state-like power of global megacorporations and the concentration of power within twenty-first-century finance. It closes by proposing a series of targeted policy solutions. Some aspects of the ESG problem are best addressed in the United States, yet significant work could be done to address the specific regulatory issues in the UK.

## Summary of recommendations

### **Change the Strategic Objectives of UK financial regulators with existing powers.**

Parliament and the Government can do this through changes to law and guidance. All public regulators are responsive to government guidance. If political will exists, existing laws can accomplish this relatively quickly.

### **Produce new statutory guidance to the FCA to exclude diversity and inclusion from their remit and reassert their existing statutory objectives (Guidance)**

Concentrating on statutory objectives gets to the core of the power structure of these regulators. Guidance is fast to enact, and can often be sufficient to achieve the desired outcome. A specific statutory mechanism entitles the Treasury to issue guidance to the FCA and the PRA, which has more weight than standard Treasury guidance. It is intended to allow the government to coordinate with the regulator in developing their economic policy agenda and steer the regulator toward the meaning of their overriding objectives. The guidance is ultimately advisory, and the wording of both provisions is that of having 'regard'. Nevertheless, the political weight of this guidance would be significant.

### **Exclude diversity and inclusion from the FCA's regulatory principles (Guidance)**

Ministers can amend the "regulatory principles" in section 3B of FSMA 2000 to add a new principle that specifies that D&I is beyond the scope of the statutory objectives would be effective.<sup>3</sup> If either regulator continued to make regulations in conflict with the principles, they could likely be nullified through Judicial Review on the grounds of illegality since they would be acting *ultra vires*. The inclusion of a new secondary "strategic objective" for both regulators in FSMA 2023 will be a relevant context for the framing of guidance.<sup>4</sup> D&I regulations are a burden that undermines UK companies' competitiveness and ability to enact meritocratic hiring practices. In addition to clarifying the original meaning of the main operational objectives of the regulators, guidance and modification of regulatory principles would emphasise the need

3. UK Public General Acts, 2000. Financial Services and Markets Act 2000, c. 8, s. 1B. Available at: <https://www.legislation.gov.uk/ukpga/2000/8/section/1B> [Accessed 16 May 2024].

4. UK Public General Acts, 2023. Financial Services and Markets Act 2023, c. 29, s. 25. Available at: <https://www.legislation.gov.uk/ukpga/2023/29/section/25>.

to drive competitiveness and growth.

### **Disapply the Public Sector Equality Duty from the Financial Conduct Authority and the Prudential Regulation Authority (Legislation)**

The FCA and the PRA are bound to follow the Public Sector Equality Duty, which demands they pay due regard to equality law and act to advance equality in their operation. Ministers can disapply the duty from the FCA and the PRA by amending Schedule 19 of the Equality Act. By removing the duty and changing the guidance governing the regulators, the Government can significantly reduce the damage of regulators' diversity and inclusion policies and clarify that they stand outside their legal objectives and duties.

### **Reverse the reporting requirements which expand woke capitalism and harm prosperity**

To cut back climate-related disclosure requirements, there are three powers which can be used to depoliticise the reporting rules imposed on companies:

1. **Companies:** the enabling power for The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 appears under section 468 of the Companies Act 2006. This states that the Secretary of State can make regulations to amend the part of CA 2006 that deals with reporting. **(Legislation)**
2. **LLPs:** the enabling power for The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022 is section 15 of the Limited Liability Partnerships Act 2000. This states that the Secretary of State may make regulations to incorporate relevant elements of company law into the law concerning partnerships. This was used to create the 2008 Regulations, which were later amended to add the TCFD disclosures by the 2022 Regulations. **(Legislation)**
3. **Pensions:** the enabling power for Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 is section 113 of the Pension Schemes Act 1993, which states that the Secretary of State may make regulations to specify disclosures in relation to personal and occupational pension schemes. **(Legislation)**

Regarding wider acceptance of ESG on a statutory level, the minister can amend the following:

1. **S 2 (2) (b) (vi) of the Occupational Pension Scheme (Investment) Regulations 2005:** this requires pension managers to include the following in their Statement of Investment Principles:
 

“the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments.”
2. The enabling power for this is section 35 of the Pensions Act 1995, which allows Regulations to be made that provide for the application of the section. **(Legislation)**

These powers have been available to ministers for many years, and to date, they have been used to increase regulatory burdens and force progressive outcomes. It is time for these powers to be used to reverse this.

## **Instruct the Competition and Markets Authority and the Financial Reporting Council from weakening competition law to fulfil ESG goals (Guidance)**

The Business Secretary should concentrate on the “Chapter I prohibition” and the issue of merger control. If engagement with the boards of either regulator fails to yield results, formal guidance can be issued.<sup>5</sup> The CMA has a great deal of autonomy from the Government. Still, it does heed the Strategic Steer produced by the Secretary of State, which states that it must prioritise consumer welfare, promote competition, and cut the cost of living in its efforts. Bending the rules to support ESG policies does not do this.

Likewise, engagement with the FRC board could ensure that ESG provisions are removed from the UK Stewardship Code 2020 in the following review (see Appendix B). The FRC operates as a company limited by guarantee but has powers delegated to it by the government or, in the case of audit, by statute. Therefore, the FRC is particularly receptive to guidance since it is unrestricted by statutory objectives requiring more independent consideration.

The force of guidance will vary because both regulators have different levels of autonomy. As a non-ministerial department created by statute, the CMA has more independence than the FRC, but it is still required to take account of guidance from the DBT in pursuing its statutory objects.<sup>6</sup>

## **A Statutory Prohibition on Debanking for businesses as well as consumers (Legislation)**

Debanking is a pressing issue because of the drive towards a cashless society and the development of central bank digital currencies. A law to prevent credit institutions and payment providers from withholding services on political grounds would protect consumers from the de-risking culture that has developed since the growth of ESG.

MPs have proposed such a law. In response, the Government announced that it would legislate to stop de-banking and “protect free speech.”<sup>7</sup> It has published a draft of the Statutory Instrument to that effect, which will mandate greater standards of transparency and opportunities for appeal for those who have had their bank accounts terminated.<sup>8</sup> The Government should follow this with a similar protection for businesses. This will be of particular benefit to British defence companies, who have had bank accounts terminated after they received poor ESG scores.

5. ‘Framework Agreement Between: The Competition and Markets Authority and the Department For Business, Energy And Industrial Strategy’, 2021, [https://assets.publishing.service.gov.uk/media/611e2563d3bf7f63a7b2926c/CMA\\_BEIS\\_Framework\\_Agreement.pdf](https://assets.publishing.service.gov.uk/media/611e2563d3bf7f63a7b2926c/CMA_BEIS_Framework_Agreement.pdf). See particularly, 6.5: ‘The Chair should enable the Board to take consistent, proportionate and fair decisions, ensuring that the Board takes into account any relevant guidance offered by the Secretary of State for BEIS, where appropriate and where doing so would not affect or compromise the Board’s independent decision-making.’

‘Framework Document Between Department for Business, Energy and Industrial Strategy and The Financial Reporting Council’, 11 May 2022, [https://media.frc.org.uk/documents/FRC\\_-\\_BEIS\\_Framework\\_Document\\_May\\_2022.pdf](https://media.frc.org.uk/documents/FRC_-_BEIS_Framework_Document_May_2022.pdf). see particularly 1.21: ‘[the Board] is responsible for ensuring [...] that the board operates within the limits of its statutory authority and any delegated authority agreed with BEIS, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the board takes into account guidance issued by BEIS as the sponsor department’.

6. The CMA is created by Part 3 and 4 of the Enterprise and Regulatory Reform Act 2013 and its operations are explained by Schedule 4.

7. UK Government, Tougher rules to stamp out debanking, 2<sup>nd</sup> October 2023, <https://www.gov.uk/government/news/tougher-rules-to-stamp-out-debanking>

8. HM Treasury, ‘The Payment Services and Payment Accounts (Contract Terminations) (Amendment) Regulations 2024,’ March 2024, [https://assets.publishing.service.gov.uk/media/65f18801981227a772f61311/DRAFT\\_SI\\_The\\_Payment\\_Services\\_and\\_Payment\\_Accounts\\_Contract\\_Terminations\\_Regulations\\_2024.pdf](https://assets.publishing.service.gov.uk/media/65f18801981227a772f61311/DRAFT_SI_The_Payment_Services_and_Payment_Accounts_Contract_Terminations_Regulations_2024.pdf)

# 1. Introduction

---

Woke capitalism refers to companies messaging for the progressive left or integrating progressive ideas into their employment and governance structures. Ross Douthat coined the phrase in 2018, referring predominantly to multi-national public companies with rigid policies and sizable advertising budgets.<sup>9</sup> It remains a valuable catch-all for a panoply of interrelated activities. Woke capitalism stretches from supermarkets selling products festooned in rainbows to hiring based on intersectional characteristics like gender, race and sexuality. These visible manifestations are but the tip of the iceberg. Under the surface, within the City, we see banks hypothecating credit facilities on sustainability criteria and funds claiming to offer better returns by focusing on 'virtuous' companies. It is easy to blame CEOs for these developments, but the real causes are more complex and remote. This report diagnoses the problem (Part I) before considering the damage this movement is causing and how policymakers can counteract it (Part II).

There is a widening gap between consumer expectations and corporate behaviour regarding how involved companies should be in politics. This takes any benefit to sales profit margin off the table as an explanation for the transformation of these companies. The finance industry is the common denominator of the many organisations claiming to have newly discovered a radical social purpose, and company policies mirror asset managers' values instead of the business's executive. Woke capitalism often makes money for these financiers at the expense of the companies they invest in, since portfolio size and risk limitation have become higher priorities than growth for institutional investors. Equally significant, yet less discussed, is the impact of law and regulation in driving the growth of woke capitalism. Both explanations indicate that woke capitalism is primarily a top-down rather than a bottom-up phenomenon.

Douthat rightly drew attention to the mixed motives of those advancing woke capitalism. Critiques that concentrate on alleged insincerity, like Carl Rhodes' book *Woke Capitalism*, fail to appreciate that real buy-in to progressive ideas is to be expected from a managerial class born of an increasingly radical network of elite universities.<sup>10</sup> In some sense, Rhodes' work is no critique at all. He believes that politicising companies have the potential to improve the world; as he sees it, it is merely the implementation of the progressive model of business that he sees failing at the hands of cynical directors. This report presents more fundamental critiques of woke capitalism, arguing that its influence is just as concerning, whether sincere or cynical.

Environmental, Social and Governance (ESG) investment is at the heart of the politicisation of the City. It involves integrating non-pecuniary considerations into investment through progressive social and environmental goals. ESG has been multiplying. There was a fourfold increase in ESG terms in European fund names over the last decade.<sup>11</sup> One of its most prominent critics, Vivek Ramaswamy, states that the amount of money in labelled ESG funds has reached \$46

9. *New York Times*, Ross Douthat, 'The Rise of Woke Capital', 28 February 2018, <https://www.nytimes.com/2018/02/28/opinion/corporate-america-activism.html>.

10. Carl Rhodes, University of Bristol Press, 2022, *Woke Capitalism: How Corporate Morality is Sabotaging Democracy*.

11. *ESG Today*, Mark Segal, 'EU Market Regulator Finds 4x Increase in Use of ESG Language in Fund Names', 3 October 2023, <https://www.esgtoday.com/eu-market-regulators-greenwashing-study-finds-4x-increase-in-use-of-esg-language-in-fund-names/>.



trillion.<sup>12</sup> It is not just the current extent of these funds but the rate of growth that should take us aback, with the figure at a mere \$15 trillion back in 2014.<sup>13</sup> Astutely, Vivek Ramaswamy also sees that this \$46 trillion figure radically underestimates the actual amount of money in the grasp of the ESG machine. He claims that perhaps \$100 trillion of investments may be subject to woke investment principles even if they are not labelled as ESG funds since asset managers assume comprehensive commitments to “responsible investing”<sup>14</sup> His colourful expression for the widespread adoption of ESG criteria in most non-ESG funds is “green-smuggling”<sup>15</sup> This assessment appears accurate and this report will examine it in depth below.

Public criticism of ESG has unquestionably risen in 2022 and 2023.<sup>16</sup> It has been suggested that BlackRock CEO Larry Fink’s retreat from ESG in his latest shareholder letter and the removal of Standard and Poor’s alphanumeric ESG scale spells the beginning of the end for ESG.<sup>17</sup> These are significant milestones, but there is a danger of calling the end of ESG too early. Conservatives risk snatching defeat from the jaws of victory: the ESG backlash is real, but it may be limited in scope and duration. It is yet to be seen whether there will be a comprehensive retreat from woke capitalism, and concerted action will be necessary to guarantee this.

There are plenty of reasons to doubt prognostication about ESG’s inevitable fall. The recent dip in assets in ESG funds is in the billions in contrast to years of trillion-dollar expansion.<sup>18</sup> The withdrawn sums may simply be reallocated to similar funds using different names as the “ESG brand” gets tarnished; “relabeling” is a trend encouraged by recent trade literature.<sup>19</sup> Terms like “ethical”, “sustainable” and “stakeholder-focused” are becoming more common in place of those three ominous letters. Equally, if Ramaswamy’s “green-smuggling” claim holds, moving money out of ESG-marked funds is unlikely to put it beyond the reach of ESG policies. We should not forget that the legislative situation is very different on this side of the Atlantic. Whereas presidential hopefuls like Ron de Santis and Ramaswamy have platformed anti-ESG sentiment, few British politicians have indicated awareness of the problem and its scale. GOP lawmakers have brought forward 49 anti-ESG bills, but no such primary legislation exists in the UK. As this paper explores, an expansive regulatory state actively promotes woke capitalism. Likewise, there is evidence that US anti-ESG legislation has achieved little and may sometimes

12. Vivek Ramasamy, Broadside Books, 2023, *Capitalist Punishment: How Wall Street is Using Your Money to Create a Country You Didn't Vote For*, p. 24.

13. *Bloomberg Intelligence*, ‘ESG assets may hit \$53 trillion by 2025, a third of global AUM’, Bloomberg, 23 February 2021, <https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>.

14. Ramaswamy, *Capitalist Punishment*, p. xiv.

15. *Ibid*, p. xiv.

16. *The Financial Times*, Diane-Laure Arjaliès and Tima Bansal, ‘ESG backlash in the US: what implications for corporations and investors?’, 11 June 2023, <https://www.ft.com/content/3f064321-138c-4c65-bbb9-6abcc92adead>.

17. *Reuters*, Isla Binnie, ‘BlackRock’s Fink says he’s stopped using “weaponised” term ESG’, 26 June 2023, <https://www.reuters.com/business/environment/blackrocks-fink-says-hes-stopped-using-weaponised-term-esg-2023-06-26/>. Philip Pilkington and Andrew Collingwood, ‘Multipolarity: Episode 33. The ESG Fad Implodes, Dim Sum Bonds, Russia’s GDP Overtaking Germany’, 11 August 2023, <https://www.youtube.com/watch?v=t7CODnj-aP4>. I am grateful to Phillip whose comments have challenged and nuanced my arguments in this report. See also *The Financial Times*, Patrick Temple-West, ‘S&P drops ESG scores from debt ratings amid scrutiny’, 8 August 2023, <https://www.ft.com/content/9426937e-28d3-4846-8440-c30583524d4c>

18. Total assets under management in ESG funds fell by about \$163.2 billion globally during the first quarter of 2023. *CNN Business*, Nicole Goodkind, ‘ESG has lost its meaning. One advocate says let’s throw it in the trash’, 3 October 2023, <https://edition.cnn.com/2023/10/03/investing/premarket-stocks-trading/index.html>.

19. *Barrons Magazine*, Paul Washington, Andrew Jones and Paul Washington, ‘ESG Backlash Is Real and Growing. What to Know’, 22 August 2023, <https://www.barrons.com/articles/esg-backlash-is-real-and-growing-what-to-know-264ec4f6>.

be directed towards the wrong aspects of the problem.<sup>20</sup>

The next part of this report is devoted to diagnosing the problem: narrating the origins of woke capitalism and the forces driving it. This will first consider the role of institutional investors before turning to primary legislation and the significant but underexplored role of financial regulators. The second part of the report will summarise some key areas where woke capitalism is damaging our society and economy. The paper closes with recommendations on how we might curtail the adverse effects of woke capitalism. These recommendations will diverge significantly from the solutions advocated by many American ESG critics who assume that the free market can correct itself when consumers are suitably informed.<sup>21</sup> In the British context, government action is necessary since substantial regulatory reforms and controls will be required to pare back and reverse the growth of woke capitalism.

| 20. *The Financial Times*, 'ESG backlash in the US'.

| 21. For instance, Ramaswamy, *Capitalist Punishment*, pp. 155-77.

**Part I: Diagnosis**

# The Origins and Drivers of Woke Capitalism

---

## 2. Asset Managers, Pension Funds and Investment Banks

### A Top-Down Problem<sup>22</sup>

In theory the market comprises many independent rational actors who determine value based on what they are willing to pay for goods and services. Their decisions are the product of supply and demand dynamics and the socially necessary labour for a given product. Companies are owned by various individuals and are locked in a perpetual battle for survival. More developed theories of the radically decentralised operation of the economy saw a resurgence under thinkers like Milton Friedman connected with the Chicago School. Many today act as though we live in this distributed and democratic financial system, yet this view is hard to maintain when faced with the facts of our money infrastructure. Many of the most influential public companies are not owned by tens of millions of individuals with a few shares each, but rather by a much smaller number of institutional investors with massive stakes. Recent research has shown that by 2021, just three institutional shareholders held 22% of the stock of S&P 500 companies,<sup>23</sup> and 9.1% of FTSE 100 companies.<sup>24</sup> This chapter considers how institutional finance created woke capitalism, what its motivations are, and how it continues to advance this agenda.

ESG phenomenon exploited this concentration of power within the system. Few financial institutions needed to accept that companies should have a 'social purpose' to force thousands of corporates to play ball. Sinclair Davidson and Scott Hargreaves indicate that six asset managers collectively control over \$29 trillion in assets under management (AUM). They note that this amounts to around a third of the entire global investment market.<sup>25</sup> To put that in context, the World Bank estimated the GDP of the United Kingdom was just \$3.07 trillion in 2022.<sup>26</sup> BlackRock alone manages assets amounting to around three times that figure.<sup>27</sup> Moreover, these asset managers own significant stakes in each other and imitate one another in their policies.

Where did asset managers get this staggering amount of money? Unlike the financiers of the nineteenth century, modern asset managers invest their clients' money instead of their own. Their top priority is often not to pick winners on the stock market but to maximise the pool of other people's money they invest to accrue more in fees. Research-based "alpha" investment has been on the wane for years, and passive 'beta' investment has predominated. The efficient

22. The primacy of asset managers in the rise of ESG has been noted by others. It forms a central strand in Vivek Ramaswamy, Swift, 2021, *Woke Inc: Inside the Corporate Social Justice Scam*. See also, Compact, Julius Krein, "Why the Right Can't Beat ESG", 3 January 2023, <https://compactmag.com/article/why-the-right-can-t-beat-esg>.

23. Sinclair Davidson and Scott Hargreaves, ARC Research, 2023 *Who Benefits? The Real Impact of ESG Investing*, p. 23.

24. David Ricketts, BlackRock and Vanguard increase hold over FTSE 100, Financial News, 21 July 2020, <https://www.fnlondon.com/articles/blackrock-and-vanguard-increase-hold-over-ftse-100-20200721>

25. Davidson and Hargreaves, *Who Benefits? The Real Impact of ESG Investing*, pp. 5-6.

26. The World Bank, 'The World Development Indicators' [https://databankfiles.worldbank.org/public/ddpext\\_download/GDP.pdf](https://databankfiles.worldbank.org/public/ddpext_download/GDP.pdf).

27. ADV Ratings. (2024) BlackRock: Assets under Management (AUM) 2024. Available at: <https://www.advratings.com/company/blackrock> [accessed: 6 September 2023].



market hypothesis states that the market will price in opportunities quickly enough to cancel out the advantages of picking individual shares based on expensive research. Taking this to heart, passive investment broadly tracks the most successful companies on an index like the S&P 500 or the FTSE 100. Naturally, asset managers overlay some additional rules and restrictions to 'add value' or, in the case of ESG, deselect companies in connection with political goals. Steady returns on a great enough scale are the name of the game. It is the passive principle that has allowed asset managers to lower expenditure and so drive down fees. As fees have lowered, there has been a commensurate increase in the number of assets under management, extending the power and reach of Blackrock, State Street, Vanguard and the rest. Together with pension funds, these asset managers control most opportunities for business growth globally. The distributed and indirect mode of ownership exercised by asset managers and pension funds has ensured competition regulators do not investigate them despite their enormous scale.

Financial regulation has encouraged this consolidation of power in several ways. Companies raise money when they list on a stock exchange by issuing new shares and selling their existing share capital to the public. This is an initial public offering (IPO). These have become steadily more regulated over the years, with businesses required to produce more complicated and more expensive prospectuses before being allowed to conduct an IPO, which has been found to raise barriers to entry for smaller firms in particular.<sup>28</sup> Notably, the British chip-designer Arm Holdings, spent \$900,000 on fees preparing its prospectus for IPO.<sup>29</sup>

In 2023, most IPOs are by way of "placements": share offerings to financial behemoths who decide whether to sell some of those shares further on the secondary market. Retail offerings – aimed at ordinary consumers – are less popular because they are heavily regulated. When they do occur, they are usually paired with a more extensive offer to institutional players. Even in rare circumstances where offers are made primarily to consumers, the regulation mandates the involvement of large financial institutions in the IPO process, allowing them to exert political influence. Investment banks must act as a sponsor on an IPO, advising the company on their application to list.<sup>30</sup> Only a few investment banks on the regulator's list can fulfil this function. Some investment banks, like Goldman Sachs, have used this as an opportunity to refuse to take companies public if they do not consider them to be sufficiently racially diverse.<sup>31</sup>

## A Brief History of ESG

**In a modern context,** "moral money" to religious investment movements in the 1920s. Quakers and Methodists involved in the temperance movement divested from companies that produced

28. European Commission, Primary and Secondary Markets in the EU, final report, November 2020, <https://www.oxera.com/wp-content/uploads/2020/11/Oxera-study-Primary-and-Secondary-Markets-in-the-EU-Final-Report-EN-1.pdf>

29. Corrie Driebusch, IPO Documents Can Cost \$900,000. No One Really Reads Them, *Wall Street Journal*, 5 December 2023, <https://www.wsj.com/livecoverage/stock-market-today-dow-jones-12-05-2023/card/ipo-documents-can-cost-900-000-no-one-really-reads-them--Vk0SktQwUtab984HdyXO>

30. LR 8.2.

31. *CNBC*, Hugh Son, 'Goldman won't take companies public without "at least one diverse board candidate"', CEO says, 23 January 2020, <https://www.cnbc.com/2020/01/23/goldman-wont-take-companies-public-that-dont-have-at-least-one-diverse-board-candidate-ceo-says.html?ref=quillette.com>

alcohol and tobacco or were involved in the gambling industry.<sup>32</sup> The 1960s was a decade of activism, and finance was no exception. Robert Zevin and Robert Schwartz pioneered “Socially Responsible Investment” (SRI).<sup>33</sup> This approach claimed to focus on stakeholders in contrast to the traditional focus on shareholders.<sup>34</sup> At the same time, objections to the apartheid regime in South Africa created a hunger for economic sanctions. When many countries ignored a non-binding UN resolution to impose financial penalties, companies began to take the initiative. General Motors director Leon Sullivan formulated the “Sullivan Principles”.<sup>35</sup> These were an early manifestation of Corporate Social Responsibility (CSR). This differed from SRI's focus on a company's internal governance and policies. The original 1977 Sullivan Principles were directed towards whether a company's policies endorsed segregation, but the new ‘Global Sullivan Principles’ in 1999 considered a more comprehensive range of concerns. The term ESG itself did not see wide circulation until the UN Financial Services Whitepaper “Who Cares Wins” in 2004, which was endorsed by 18 major financial institutions with over \$6 trillion in managed funds.<sup>36</sup> However, the largest asset managers were conspicuously absent from the list: BlackRock, Vanguard, State Street and Invesco. This may explain why it was not until the mid-2010s that ESG would become ubiquitous.

Though largely absent from “Who Cares Wins”, the language of “stakeholder capitalism” came to define ESG. It was promulgated by economist Klaus Schwab, founder of the World Economic Forum (WEF), held in Davos. Tickets to Schwab's meetings now bear a five-figure price tag, and an invitation represents membership in the highest echelons of the financial elite. This conference played an important role in raising the profile of ESG and bringing together different streams of nascent woke capitalism. As Ramaswamy has explained, ESG is an amalgam of prior movements supercharged by the development of more hierarchical and centralised forms of finance. The stakeholder-focused SRI movement is represented by the “E” and the “S” of the ESG acronym. This was consolidated with the executive conduct-focused CSR movement.<sup>37</sup> A more defensible concern about governance structures was elided with a more overtly political stakeholder-focused SRI movement. Of the two, SRI was born grasping its brother's heel.

Its prominence is undeniable, but one should not take the “stakeholder capitalism” language at face value. Far from reflecting popular demand, research by the financial services consultancy SEC Newgate in 2023 found that just 13 per cent of the British public have a “good understanding” of what ESG is.<sup>38</sup> The picture is much the same in the United States.<sup>39</sup> ESG represents the political programme of an elite; it allows CEOs and financiers to accrue political

32. *Investopedia*, James Lumberg, ‘A History of Impact Investing’, 11 September 2022, <https://www.investopedia.com/news/history-impact-investing/>.

33. *Bloomberg*, ‘The Two Wall Street Liberals Behind ESG's \$35 Trillion Explosion’, 9 December 2021, <https://www.bloomberg.com/news/videos/2021-12-09/how-wall-street-liberals-built-esg-s-35-trillion-market-video>.

34. ‘Stakeholder’ is an ambiguous term referring to people who contribute to or benefit from the activities of a business. The ambiguity is purposeful and allows ‘stakeholder’ to serve as a stand-in for left-wing political interests.

35. Zeb Larson, ‘The Sullivan Principles: South Africa, Apartheid, and Globalization’, *Diplomatic History* 44:3, June 2020, pp. 479-503, <https://doi.org/10.1093/dh/dhaa002>.

36. The World Bank, *Who Cares Wins*, December 2004, <https://documents1.worldbank.org/curated/en/280911488968799581/pdf/113237-WP-WhoCaresWins-2004.pdf>

37. Ramaswamy, *Capitalist Punishment*, pp. 4-8.

38. Charlie Conchie and Chris Dorrell, More Brits believe in aliens than understand ESG: new polling, *City AM*, 11 October 2023, <https://www.cityam.com/more-brits-believe-in-aliens-than-understand-esg-new-polling/>

39. Lydia Saad, ESG not making waves with American public, *Gallup*, 22 May 2023, <https://news.gallup.com/poll/506171/esg-not-making-waves-american-public.aspx>

power themselves without the inconvenience of candidacy.<sup>40</sup> It is institutional shareholders that are pushing ESG and not stakeholders. The issue is that the separation of legal and beneficial ownership means that the interests of these shareholders do not align with those assumed by classical economic theory. Asset managers, pension funds, mutual funds, and investment banks that acquire equity *are* shareholders. Still, they primarily profit from expanding their AUM or overseeing transactions, which might not always mean raising the investee company's profitability.

We now see asset managers using shareholder remedies in company law to protect what are represented as "stakeholder" interests. A vivid example last year was an attempted lawsuit called *ClientEarth v Shell*. The environmental charity ClientEarth brought an action in the High Court alleging that the directors of Shell had violated their duty to promote the success of the company for the benefit of its shareholders – surprising in a year when the board declared a record \$40 billion in profit.<sup>41</sup> ClientEarth, the environmental charity that brought the suit, claimed that Shell's climate change management strategy was inadequate and could jeopardise future profits.<sup>42</sup> What was most striking was that the challenge method was a *shareholder* remedy. ClientEarth was joined in their action by a consortium of shareholders with almost half a trillion dollars of assets under management, including 12 million shares in Shell.<sup>43</sup> Thankfully, the high procedural bar to bringing this type of claim meant that the court dismissed it at a preliminary hearing.

This is not the first attempt to use the courts to force ESG principles on businesses, and it will likely not be the last. In 2009, environmental campaigners People & Planet attempted to conduct a judicial review against the British Government over the handling of its investment in the Royal Bank of Scotland, which was nationalised after the financial crisis. The campaign groups claimed that the Government had acted unlawfully in its investment of RBS under section 172 of the Companies Act 2006 on climate change grounds. This section demands that all directors of companies have regard to the long-term consequences of their decisions for the company's operations and the environment.<sup>44</sup> Whilst the case failed, there remains a growing momentum behind an attempt to re-write the Companies Act to explicitly mandate ESG concerns in law for all company directors, known as the Better Business Act. This is a live political issue that will not go away soon.

40. The problem of CEOs achieving political power absent accountability is a theme throughout Ramaswamy, *Woke Inc.*

41. CNBC, Sam Meredith, 'Oil giant Shell posts highest-ever annual profit of \$40 billion', 2 February 2023, <https://www.cnbc.com/2023/02/02/shell-earnings-oil-giant-reports-record-annual-profits.html>.

42. 'Investor Briefing Redirecting Shell: Derivative claim against the Board of Shell plc', 31 March 2022, [https://www.clientearth.org/media/4rxn214f/shell-plc-investor-briefing-31-3-22\\_final.pdf](https://www.clientearth.org/media/4rxn214f/shell-plc-investor-briefing-31-3-22_final.pdf).

43. ClientEarth, 'ClientEarth files climate risk lawsuit against Shell's Board with support from institutional investors', 9 February 2023, [www.clientearth.org/latest/press-office/press/clientearth-files-climate-risk-lawsuit-against-shell-s-board-with-support-from-institutional-investors/](http://www.clientearth.org/latest/press-office/press/clientearth-files-climate-risk-lawsuit-against-shell-s-board-with-support-from-institutional-investors/).

44. Climate Case Chart. (2009) *R (People and Planet) v HM Treasury*, Available at: [https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2009/20091020\\_2009-EWHC-3020\\_judgment-1.pdf](https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2009/20091020_2009-EWHC-3020_judgment-1.pdf) (Accessed: 8 March 2024).

## What's in it for Asset Managers?

The question arises: why do asset managers use their financial might to impose political expectations on companies? ESG-managed funds can charge higher fees than standard passive index funds, and this is the simplest explanation.<sup>45</sup> Yet Ockham's razor remains only a rule of thumb – this explanation would not account for the materialisation of ESG principles in non-ESG-marked funds. Those funds cannot increase managers' returns by charging ESG premiums. We should not be too swift to dismiss the possibility that at least some asset managers are genuinely committed to their stated ideals. There has been a realignment of voting patterns in recent years, with the Labour Party in the UK and the Democratic Party in the USA absorbing more and more votes from the affluent professional class.<sup>46</sup> Some of this may be led by guilt over well-publicized business failings like the Global Financial Crisis or the Deepwater Horizon oil spill. Modern commerce's technocratic, rationalist and borderless nature may also attract people with a different political persuasion than the heroic individualism of nineteenth-century tycoons.

Whether or not the C-suites of financial institutions are committed to progressivism, their workforce usually is. Financial institutions depend on attracting a skilled workforce as finance becomes more computerised and quantitative. Recent Civitas research shows a strong correlation between the academic prestige of UK universities and their emphasis on radical progressive content.<sup>47</sup> A corollary is that "virtue signalling" may be a way to secure a competitive advantage by attracting highly skilled students who have undergone several years of intense exposure to ideology. According to research commissioned by CitiBank, millennials are willing to forego an average of 14.4 per cent of their expected compensation to work for companies in line with their political values.<sup>48</sup>

The risk management culture within professional investment will likely be a significant motivator of this phenomenon. Managing a successful portfolio is about guaranteeing positive returns by balancing growth potential against different kinds of risk. Fundamental concepts like portfolio diversification are all methods of accounting for risk. However, in a world where many of the most profitable companies hold their worth through intangible values, risk management is partly a public relations exercise. The progressive bias of the media and entertainment industry can make woke policies desirable to track the media narrative. This risk is especially pronounced for tech companies that have generated good returns for asset managers in recent years. For instance, if we look at a balance sheet for X (Twitter), we can see that goodwill has a value equal to more than half its physical assets, like property and computing equipment.<sup>49</sup> In the hands of one of the richest men in the world, X is a rare example of a company willing to risk its

45. Ramaswamy, *Capitalist Punishment*, pp. 24-28

46. *UnHerd*, Matthew Thomas 'How the Democrats became the party of the rich', May 12 2022, <https://unherd.com/2022/05/how-the-democrats-became-the-party-of-the-rich/>.

*UnHerd*, editorial, 'It's Official: Labour is No Longer the Party of the Poor', 25 June 2020, <https://unherd.com/thepost/its-official-labour-is-now-the-party-of-the-rich/>.

47. Civitas, Richard Norrie, 'The Radical Progressive University Guide', January 2023, <https://www.civitas.org.uk/publications/the-radical-progressive-university-guide/>.

48. CitiBank, 'Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.', September 2020, p. 85. <https://ir.citi.com/%2FPRxPvgNWu319AU1ajGf%2BsKbjJbJSaTOSdw2DF4xynPwFB8a2jV1FaA3ldy7vY59bOtN2lxVQM%3D>.

49. Goodwill refers to the attractive reputational force that brings in customers. 'Twitter, Inc: Quarterly Report Pursuant to Section 13 or 15(D) of The Securities Exchange Act Of 1934 for the Quarterly Period Ended March 31, 2022', <https://www.sec.gov/Archives/edgar/data/1418091/000141809122000075/twtr-20220331.htm>.



valuation by taking an independent tack. From the perspective of risk management, wherever one's actual political values stand, it makes sense to require companies you invest in to cover themselves in a veneer of media-friendly politics.

"De-banking" may represent similar concerns. Coutts closing Nigel Farage's accounts threw this issue into the public consciousness, but there was a pattern of banks refusing to handle clients based on their political commitments long before Farage.<sup>50</sup> To understand what is happening here, we must consider a related phenomenon. Money laundering in the London property market led to the Proceeds of Crime Act 2002 (POCA) passage, which imposes stringent obligations on banks to conduct customer checks. These checks are required on all customers, but particular scrutiny is given to some client categories. For instance, politically exposed persons (PEPs), such as politicians and diplomats, are considered high risk. Banks realised that the risks and burdens attached to engaging with these clients following the passage of POCA made no commercial sense. It was often more economical to simply cease accepting them as clients. This practice has been referred to as 'de-risking'.<sup>51</sup> Banks now seem to be extending the "de-risking" principle beyond money laundering to consider the public relations risk of servicing clients who do not "align with our values". Sometimes, "de-banking" may be malicious, but it often reflects a desire to avoid hassle, expenditure and media backlash.

Using ESG for risk management is also a consideration that has arisen from the growth of environmental litigation. The amount of climate litigation has doubled since the Paris Agreement in 2015.<sup>52</sup> One reason for this expansion is an array of new environmental protection requirements. These sometimes put the onus on companies to enforce against each other, like the Environment Act 2021, which requires companies to do climate due diligence on their supply chains. Another is the general politicisation of the third sector in the last decade. We now see charities and NGOs set up to pursue such claims as ClientEarth. The 2011 Charities Act expanded the permissible grounds of charity to include more politically charged subjects like the environment and the promotion of diversity and inclusion.<sup>53</sup> Large charities weaponise their endowments to pursue social justice activism, including through litigation funding.<sup>54</sup> A brief look at the websites of ClientEarth, Greenpeace and Friends of the Earth will show that they are bringing high-profile actions supported by wealthy external litigation partners.<sup>55</sup> Asset managers are conscious of the damage such action could do to the value of their shareholdings, so they implement blanket ESG policies to lessen the risk. This reverses Andrew Breitbart's adage that "politics is downstream from culture," as an entirely new culture has been created out of regulations. Fiduciary duty, which one might assume is impervious to culture wars, has been shaped by laws and regulations, the product of politics.

50. *The Daily Telegraph*, Gordon Rayner, 'Coutts closed Nigel Farage's account because he didn't "align with their values"', 18 July 2023, <https://www.telegraph.co.uk/news/2023/07/18/nigel-farage-coutts-bank-account-closed-align-with-values/>.

51. Transparency International, 'On Politically Exposed Persons, De-Risking and The Fight Against Corruption', 28 June 2023, <https://www.transparency.org/en/blog/politically-exposed-persons-banks-derisking-fight-corruption>.

52. DLA Piper, Naomi Pryde, 'ESG in 2023: Who Cares Wins?', 7 March 2023, <https://www.dlapiper.com/en-gb/insights/publications/2023/03/esg-in-2023-who-cares-wins>.

53. UK Public General Acts, 2011. Charities Act 2011, Section 3 <https://www.legislation.gov.uk/ukpga/2011/25/section/3>.

54. *The Critic*, Poppy Coburn, 'Radical Chic Charities', April 2023, <https://thecritic.co.uk/issues/april-2023/radical-chic-charities/>.

55. ClientEarth, 'Our Impact', 2023, <https://www.clientearth.org/latest/progress/>; Greenpeace 'Legal Unit', 2023, <https://www.greenpeace.org/international/about/legal/>; *Friends of the Earth*, 'Using the Law to Defend the Environment', 2023, <https://friendsoftheearth.uk/legal-and-planning/using-law-defend-environment>.

Regulatory requirements are a major motivator for corporations to go woke – the potential for heavy fines or exclusion from a regulated market will be significant in their risk calculus. One aspect of this is negative pressure. Companies fear stranded assets and fines if they do not pre-emptively prepare their business for a supposedly inevitable future that the regulators will embrace. That includes the expectation that Britain will continue to mandate decarbonisation on a rapid timetable. Yet regulation can present advantages as well as disadvantages for companies. Diversity-based employment unfairly benefits large companies by creating burdens that are unequally borne across the sector.<sup>56</sup> For instance, maintaining a competent workforce when selecting factors other than merit requires a company to have an extremely rich pool of applicants. For an organisation like Google or Meta, selecting criteria other than merit means losing a supererogatory benefit, whereas, for smaller competitors, it could mean choosing a candidate who lacks the necessary competencies to perform a critical business function. If everyone in the industry is expected to hire on diversity grounds, some companies will be disadvantaged more than others. ESG entrenches the advantages of oligopolies through various similar mechanisms.

## How Institutional Investors Politicise Companies

Let us now turn to the specific ways in which institutional investors exert influence on companies. Three main mechanisms transform the values and policies of finance recipients.

### *(i) Making investment conditional on ESG policies and diversity quotas*

Investment can be withheld from non-woke companies pre-emptively to create a market-wide inducement to embrace progressivism. ESG rating agencies like MSCI, Morningstar, Moodys and S&P triage companies based on their compliance with ESG criteria on behalf of investment funds.<sup>57</sup> Rating agencies profit by charging fees to provide data to investors, and they overlap with existing credit rating agencies. These agencies did not cover themselves in glory back in 2008, and it was found that over \$3 trillion of their AAA-rated securities were based on subprime mortgages that would never be repaid.<sup>58</sup> Since the securities issuer paid fees, competition for market share encouraged “grade inflation” and no more than cursory investigation of the debts underpinning securitisations. Similar incentives may exist for “greenwashing” today. Still, the real problem is the opportunity cost for the UK economy of not investing in well-run innovative companies that refuse to play politics. Another way that large investors can dictate company policy is through prescribed conditions in share purchase or loan documentation. These would once have been constrained to representations and warranties about the company's financial soundness, but it now presents another opportunity to inject boilerplate ESG conditions. Whether the strings attached are implicit or explicit, the extraordinary leverage investment institutions have to influence companies should not be ignored.

### *(ii) Softer influence by lobbying and annual letters to CEOs that implies woke companies will be given preferential treatment*

56. *Quillette*, William Malcolmson, 'The Problem with the Diversity Dividend', 2 March 2022, <https://quillette.com/2022/03/02/the-problem-with-the-diversity-dividend/>.

57. *The Financial Times*, Kenza Bryan, 'ESG ratings: whose interests do they serve?', 3 October 2023, <https://www.ft.com/content/fbe10867-fea1-4887-b404-9f9e301e102e>.

58. *Bloomberg*, Elliot Blair Smith, 'Bringing Down Wall Street as Ratings Let Loose Subprime Scourge', 24 September 2008, <https://www.bloomberg.com/news/articles/2008-09-24/bringing-down-wall-street-as-ratings-let-loose-subprime-scourge>.

The birth of woke capitalism can be arguably traced to 2018, much later than the general cultural "awakening" of the early 2010s.<sup>59</sup> There were many latent causes, but the trigger event was Larry Fink's letters to CEOs calling them to pursue a new "sustainable" approach to business which serves a "social purpose".<sup>60</sup> These letters were highly influential, and were more than corporate press releases for BlackRock: they signalled to the market the basis on which BlackRock would make future investment decisions.

Asset managers also cement ESG conformity by engaging directly with the boards of companies in which they are invested. The liquidity of listed shares means that asset managers can divest from a company at a moment's notice, indicating they are no longer available to support business growth in future. Maintaining a relationship, therefore, becomes a priority for management at recipient companies. In recent years, the explosion of woke advertising has arguably become a company ploy to attract investment from BlackRock, Vanguard and State Street. Vincent Harinam's cogent analysis indicates woke advertising has little impact on sales profitability, but the real audience for advertising is financiers, not consumers.<sup>61</sup> Even if Fink *et al.* have softened their rhetoric in the past year, ESG is well integrated into the financial system, and it will now take active efforts to remove it instead of a mere cooling off of ESG rhetoric from Wall Street giants. Fink may have been clear that the ESG brand is no longer for him, but he has done nothing to discourage others from pursuing non-pecuniary investment strategies, and BlackRock still holds vast funds selected on ESG criteria.<sup>62</sup>

*(iii) Influence after investing using proxy voting in shareholder meetings to direct the board and set company policy*

Asset managers invest other people's money under a trust structure. Although the financial returns, less a fee, are transmitted to the original investors, the asset manager can exercise the legal rights connected to the equities. The Companies Act 2006 creates an elaborate set of rights for shareholders on top of what is voluntarily written into the company's constitution, but, in practice, these rights will rarely be exercised directly by shareholders.<sup>63</sup> With these rights in their pocket, asset managers can reset company policy from the inside and reform management as they choose. Asset managers and pension funds typically have a substantial minority stake, so the most direct method of exerting pressure (directing the board by special resolution) is rarely available to them when acting individually. However, it is not uncommon for asset managers to adopt similar policies and act together, even without overt collusion. A few investors, each with a plurality, can cumulate to reach a simple majority, which is sufficient to remove directors at a general meeting or approve most resolutions.<sup>64</sup>

The role of proxy advisors accentuates this problem. Deciding how to vote on shareholder

59. *UnHerd*, David Rozado, 'Where did the Great Awakening come from? New research shows an abrupt post-2010 surge in academia and the media', 8 September 2022, <https://unherd.com/thepost/where-did-the-great-awakening-come-from/>.

60. BlackRock, 'Larry Fink's Annual Letter to CEOs: A Sense of Purpose', 2018, <https://aips.online/wp-content/uploads/2018/04/Larry-Fink-letter-to-CEOs-2018-BlackRock.pdf>.

61. *Quillette*, Vincent Harinam, 'Is Woke Capitalism Profitable?', 21 July 2020, <https://quillette.com/2020/07/21/is-woke-capitalism-profitable/>.

62. *The Wall Street Journal*, Podcast, 'Larry Fink on ESG, the Economy and the State of Democracy' 18 October 2023, <https://www.wsj.com/podcasts/opinion-free-expression/larry-fink-on-esg-the-economy-and-the-state-of-democracy/f2e25649-e49b-4792-b025-ff4496d346f5>.

63. The situation is different in smaller private companies which are not the target of asset managers.

64. For example, BlackRock has threatened to oust board directors who did not set targets in line with international climate change objectives. Ramaswamy, *Capitalist Punishment*, p. 69.

resolutions is time-consuming, and time is proverbially money. Asset managers often outsource this activity to proxy advisers who tell them how to vote with the shares they hold in the light of their expressed interests. A duopoly controls this niche market; Glass Lewis and ISS provide 97% of services in the proxy voting market, which amounts to 40% of all votes at shareholder meetings.<sup>65</sup> Both companies are firmly committed to ESG and ensure asset managers vote almost like a single entity. By way of example, Glass Lewis's overarching guidelines state that they will typically vote against any applicant for a directorship where:

- The nomination committee chair, if the company is in the FTSE 350 and has failed to meet the 33% gender diversity target set out by the Hampton-Alexander Review, has not disclosed any convincing explanation or plan to address the issue.
- The nomination committee chair of any listed companies outside of the FTSE 350 which have failed to appoint one gender-diverse director, subject to mitigating circumstances.
- The nomination committee chair if the company is in the FTSE 100 and has failed to appoint one director of an ethnic minority group, as recommended by the Parker Review, and has failed to provide clear and compelling disclosure for why it has been unable to do so.<sup>66</sup>

65. Ramaswamy, *Capitalist Punishment*, p. 83.

66. Glass Lewis, '2023 Policy Guidelines', pp. 21-22, <https://www.glasslewis.com/wp-content/uploads/2022/11/UK-Voting-Guidelines-2023-GL.pdf?hsCtaTracking=0b3cc25b-7863-48c6-bd17-24b72573af42%7C9f1a5999-5a40-415f-818d-dca929feda08>.

ISS has equivalent provisions. 'ISS United Kingdom and Ireland: Proxy Voting Guidelines Benchmark Policy Recommendations 2023', pp. 10-13 and 33-34, <https://www.issgovernance.com/file/policy/active/emea/UK-and-Ireland-Voting-Guidelines.pdf>.

### 3. Primary Legislation

Statute law has inevitably played a part in the development of woke capitalism. By and large, this has been an indirect effect rather than the intended consequence of legislation. The recurring story is one of the vague statutory duties which give rise to compliance bureaucracies that expand and metastasise. There is a culture of misunderstanding stoked by activist charities like Stonewall, who exaggerate the breadth and effect of provisions in the Equality Act to achieve their ends.<sup>67</sup> Internal compliance officers and HR staff have the same perverse incentives to exaggerate to preserve their employment and, further, the ideological goals that attract them to work in the sector. Regulatory codes impose obligations on companies that are more direct, extreme, enforceable, and specific, and these are explored in the next section of the report. Notwithstanding this, it is essential to briefly account for specific pieces of regulation that are relevant to the issue. This highly selective treatment is necessary for other parts of the reports treatment of woke capitalism.

#### The Equality Act and Associated Employment Law

Equality, diversity and inclusion (EDI) policies within companies often cite key provisions of the Equality Act 2010 (EA 2010). Those concerned with harassment, direct and indirect discrimination and victimisation will usually make an appearance.<sup>68</sup> It is not uncommon for these statements to exaggerate the demands of the Act, even to the point of using quota systems which are discouraged by the legislation.<sup>69</sup> This is partly a result of the sweeping, conceptual wording of these provisions, whose meaning has gradually been narrowed in the courts. Driven into the harbour by headwinds of Blairite liberal thinking, some inevitable problems with the Act were overlooked at its inception. The looming conflict of protected characteristics is one such issue which has led to bouts of litigation. Because the Act presents a flat hierarchy, the necessary prioritisation of protected characteristics was fixed by judicial fiat rather than under democratic scrutiny.

In companies that fulfil a “public function” defined by the EA 2010, the Public Sector Equality Duty requires decision-makers to consider several factors that encourage equality and inclusion (s 149). Non-lawyers often construe the relatively soft language of “due regard” as a requirement to prioritise these considerations. Such interpretations are encouraged by an infrastructure of activist charities that advise. From the company’s point of view, the *quid pro quo* is that their liability is reduced by utilising their training. This is another case where the strict legal force of the Act and its real-world effects are out of kilter, and in a way which has contributed to the oppressive EDI culture of the modern workplace. Paul Yowell’s report, *The Future of Equality*, provides a thorough and realistic assessment of the Act and how it might be reformed.<sup>70</sup>

67. Nicola Woolcock, ‘Stonewall ‘gave bad advice’ to university in free speech row’, 20 May 2021, <https://www.thetimes.co.uk/article/stonewall-gave-bad-advice-to-university-in-free-speech-row-z6b27jdkh>.

68. UK Public Acts 2010. ss 13-19 (discrimination), s 26 (harassment), s 27 (victimisation) Equality Act 2010 <https://www.legislation.gov.uk/ukpga/2010/15/contents>.

69. UK Public Acts 2010. ss 158-59 Equality Act 2010 <https://www.legislation.gov.uk/ukpga/2010/15/part/11/chapter/2>.

70. Policy Exchange, 2021, Paul Yowell, *The Future of Equality: Why it is time to review the Equality Act 2010*. <https://policyexchange.org.uk/wp-content/uploads/2021/12/The-Future-of-Equality.pdf>.

## Directors' Duties under Company Law

The directors of a company owe fiduciary duties to the company itself and can be liable for any losses caused in breach of these duties, which developed in the courts but are codified in their modern form in the Companies Act 2006.<sup>71</sup> They play a crucial and positive role in preventing directors from abusing their position and guarantee they make decisions in the company's long-term interests.

The most important of these duties is promoting the company's success for its shareholders' benefit in section 172. The provision's wording was hotly debated in the Commons when the Act was passed, representing an early version of the shareholder/stakeholder interests debate. In its final form, the duty is framed as a "shareholder" duty but has been fudged with a requirement to consider certain stakeholder-linked factors. Section 172 (1) of the Act requires directors to consider factors like protecting the environment and the interests of employees and the community when making board decisions. They must "have regard" to these factors as they exercise their powers, subject to their overarching duty "to promote the company's success for the benefit of its members as a whole".

There have been attempts to expand this duty through strategic litigation, notably ClientEarth's failed derivative action against Shell Plc, discussed above. Thankfully, these have been unsuccessful to date, but the second-order effects of the provision remain nefarious. In practice, showing 'regard' was given to the s 172 (1) factors, which means providing detailed information in board minutes and annual reports on how they affected the decision. The framing of this provision contributes to the retention of professional ESG advisors and HR managers who can work on reporting and whose very employment is used to evidence compliance.

## Environmental Legislation

The field of green legislation needs to be more extensive in order to be adequately surveyed in this report. The paper focuses on one area that feeds into the regulatory issues discussed in the next section: statutory climate disclosure requirements.

In 2015, the International Financial Stability Board (FSB) set up the Task Force on Climate-related Financial Disclosures (TCFD), which recommended a series of complex disclosures on carbon emissions and the organisation's approach to reducing them. The extent and detail of the disclosures (see table below) are taxing and harmful when the government struggles to boost competitiveness. In 2022, the Companies Act was amended by a statutory instrument to impose TCFD-aligned reporting on all large companies.<sup>72</sup> Parallel secondary legislation has imposed the same on Limited Liability Partnerships, covering most firms practising law, accountancy and consulting.<sup>73</sup> Similarly, these requirements were extended to large pension funds.<sup>74</sup>

Below, regulators are building these requirements into their codes, which makes enforcement easier. The effect of such elaborate disclosure requirements is to necessitate permanent staff who work on climate activism within the firm when not completing the disclosures themselves. This will likely harm a company's bottom line and the quality of service consumers receive by distracting from its core mission.

| 71. UK Public Acts 2006. ss 171-77 Companies Act 2006 <https://www.legislation.gov.uk/ukpga/2006/46/section/171>.

| 72. The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022.

| 73. The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022.

| 74. Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021.



## 4. Regulation

Since the publication of Ramaswamy's *Woke Inc* in 2021, public recognition of the negative influence of asset managers has grown. On the other hand, the role played by financial regulators in driving woke capitalism remains obscure. Regulatory requirements feed into the problem posed by asset managers and explain why ESG rules are leeching into non-ESG-marked funds. The approach of regulators in generating their rules differs from that of the parliamentary draftsman; in some sense, it is more authoritarian but constrained to a limited area of control. Alongside "provisions", regulators use general "principles" that should be complied with in spirit and the letter. Beneath this sword of Damocles, companies have evolved a philosophy of appeasement. They cultivate positive relationships with the regulator and proactively signal compliance with principles through messaging and advertising. This attitude has also spurred an overactive risk-limitation culture, which sees political differences as a threat. This operates at the level of companies and investors, creating a powerful, self-reinforcing culture. Breaking the rules can potentially tank share value because of draconian powers available to regulators and associated reputational damage.

As this chapter shows, regulators have embraced ESG ideologically and asset managers, fearing for the value of their investments, now expect companies to pay allegiance to them. Asset managers themselves are heavily regulated. In addition to worrying about regulators devaluing their investments, they must consider whether the rules determining their portfolios' composition conform to regulatory expectations, lest they face financial consequences themselves. In this way, regulation encourages "green smuggling".

Ultimately, individuals are at the sharp end of these kinds of moves. Every recommendation by banks or consultants on reducing one's institutional exposure to climate change ultimately means an individual or a business will lose access to financial services despite doing something entirely legal. For example, HSBC published a practitioners' guide to Net Zero, which includes a NatWest case study on reducing exposure to carbon intensity in residential real estate.<sup>75</sup> Similarly, the obfuscatory language in advice from McKinsey to banks on ensuring their portfolios meet net-zero obligations hides the fact that, ultimately, some people will be refused loans and other financial services in the pursuit of political ends.<sup>76</sup> This is the consequence of a highly regulated economy, in which businesses become arms of the state, instead of independent agents of commerce. This is a recipe for monopolies and oligopolies, which reduce competition and choice for consumers, but also reduce individual agency, and the ability to grow a business.

By encouraging corporate policies like these, regulators are undermining the competitiveness of the UK economy through onerous diversity reporting requirements and the integration of non-meritocratic elements into employment regimes. This also necessitates hiring a 'diversity bureaucracy' tasked with maintaining compliance. Regulatory requirements also support the

75. HSBC. (2021) A Practitioner's Guide to Net Zero for Banks, Available at: <https://www.business.hsbc.com/-/media/media/gbm-global/pdf/articles/a-practitioners-guide-to-net-zero-for-banks.pdf> (Accessed: 12 March 2024).

76. McKinsey & Company. Managing Financed Emissions: How Banks Can Support the Net-Zero Transition, Available at: <https://www.mckinsey.com/industries/financial-services/our-insights/managing-financed-emissions-how-banks-can-support-the-net-zero-transition> (Accessed: 12 March 2024).

ESG rating agency. Regulators' Disclosure obligations help asset managers deselect non-woke companies from their portfolios since this information is made public and exploited to produce ESG ratings. Not only is the danger posed by ideological regulation poorly understood, but many commentators propose further regulation as a tonic because it can potentially diminish deceptive practices.<sup>77</sup> This is a mistake whilst the political neutrality of regulators remains compromised.

Strictly speaking, "regulator" refers to statutory bodies, like the Financial Conduct Authority, empowered to create secondary legislation within a limited domain. Independent bodies with statutory authority, like the Financial Reporting Council, are also categorised as regulators by the Office for National Statistics. However, they also perform other civil functions and are incorporated with the same legal structure as many charities. Some of the codes imposed by such regulators have legal force; others are voluntary. However, as mentioned, the relational approach of regulators exemplified by "principles" means that neglecting some purportedly "voluntary" codes can be unwise.

Beyond regulators, it is important to consider specific trade associations (for example, the Investment Association) that have taken on a regulatory role by writing guidance determining market practice. The policy world often ignores non-binding codes, but their impact on the industry can be similar to actual regulation due to commercial pressure created by collective action. Standardised checks within the industry mean deviating from non-binding codes like the FRC's Stewardship Code can prevent institutional investors from collaborating with other financial organisations. Taking this more expansive view of regulation (whilst highlighting differences locally) is important because the modern regulatory state blurs the boundaries between government and the private sector. This has been apparent to the judiciary since the 1980s when the Court of Appeal decided that the Takeover Panel, then a private organisation without statutory power, could be subject to Judicial Review because it "performed a public function".<sup>78</sup> As the industry's accepted body for self-regulation, the Takeover Panel met this threshold. The prominence of woke ideology in trade associations is a cause for concern. Bodies like the Investment Association perform a public function and are, in effect, private regulators.

The regulatory situation contradicts the narrative that the threat of woke capitalism has been thoroughly neutralised in 2023, particularly in the UK. On the contrary, several proposals were made this year for substantially expanding regulatory frameworks that encourage the growth of woke capitalism. Government action to prevent this in the next year will be critical. In addition to the more urgent task of preventing the new rules from coming into force, many existing regulations deserve attention.

ESG-sceptics should not be complacent following reports of the poor performance of ESG-based funds in the United States, or assume that market forces will take us in the right direction by defaults. This section shows that British regulators use their powers to embed ESG principles in law, potentially locking the British economy into a highly regulated and uncompetitive model in perpetuity. Appendix B includes a selective list of current provisions that might be amended or repealed to improve the situation.

77. For instance, encouraging regulatory action on 'greenwashing' is recommended by Sinclair and Hargreave *Who Benefits?*, pp. 30-31.

78. *R v Panel on Take-overs and Mergers; Ex parte Datafin plc* [1987] QB 815, [https://www.iclr.co.uk/document/1981004692/casereport\\_62430/html](https://www.iclr.co.uk/document/1981004692/casereport_62430/html).

## A. The Financial Conduct Authority

Following the global financial crisis, the Financial Services and Markets Act 2000 (FSMA 2000) was amended to replace the Financial Services Authority (FSA) with two powerful regulators: the Financial Conduct Authority (FCA) and the Prudential Regulatory Authority (PRA).<sup>79</sup> Both regulators have taken a more interventionist approach than their predecessor and have produced an elaborate infrastructure that has grown in conjunction with other European regulators.<sup>80</sup> The FCA's regulatory handbook alone now runs to twenty bulky volumes, and some blame its proliferation of rules for migrating listings away from the London Stock Exchange. Indeed, this is the reason the FCA has started simplifying its listing rules after years of bloat.<sup>81</sup>

The FCA has a broad remit that covers consumer-facing institutions, including fund managers, securities exchanges, credit institutions and those who provide financial advice. Regulating securities exchanges also covers public companies that use their services. The FCA is empowered to make rules in line with three statutory objectives. These are to secure appropriate protection for consumers, protect the integrity of the UK financial system and promote competition in consumers' interests.<sup>82</sup> The appointment of a new CEO, Nikhil Rathi, in 2020, along with the wider growth of ESG in the late 2010s has seen the organisation's political neutrality dissolve. Rathi claims that ESG is a 'golden thread' that the FCA weaves throughout its work.<sup>83</sup> The FCA is among the worst offenders when it comes to encouraging the development of woke capitalism in Britain.

Under Rathi, the FCA interprets its statutory objectives loosely to justify promoting ESG, arguing that intersectional diversity 'protects' consumers by encouraging good commercial decision-making and promotes 'competition'. These claims may inadvertently conceal the fact that the regulator is exceeding its authority in making nakedly political rules that extend beyond its statutory objectives and its field of expertise.

The main areas in which the FCA contributes to woke capitalism are discussed below. They can be summarised as follows:

1. Diversity targets and disclosure requirements under the listing regime
2. 'Fitness and propriety' evaluations of company officers
3. Climate reporting obligations
4. Anti-greenwashing measures
5. A proposed parallel D&I Regime

79. The new regulators were created through the Financial Services Act 2012.

80. Much of this regulation was either retained under the European Union Withdrawal Act 2018 or has been annexed in or imitated by the FCA under their own regulations.

81. Sonia Rach, FCA to simplify listing rules, FT Adviser, 3 May 2023, <https://www.ftadviser.com/regulation/2023/05/03/fca-to-simplify-listing-rules/>

82. The protection objective: 'securing an appropriate degree of protection for consumers' (s 1C FSMA); the integrity objective: 'protecting and enhancing the integrity of the UK financial system' (s 1D FSMA); the competition objective: 'promoting effective competition in the interests of consumers in the markets' for regulated service providers (s 1E FSMA).

83. FCA, Nikhil Rathi, 'A strategy for positive sustainable change: A speech by our CEO, Nikhil Rathi, delivered at COP26', 3 November 2021, <https://www.fca.org.uk/news/speeches/strategy-positive-sustainable-change>.

## Diversity Targets and Disclosure Requirements Under the Listing Regime

A series of FCA regulations undermine meritocratic hiring and promotion principles within UK public companies through heavy-handed quotas. In recent years, there has been a shift in the attitude of the FCA, from encouraging companies to use their judgment on diversity towards pressuring them to meet targets. This threatens the UK's competitive edge in international commerce by incentivising less competent employees at the most senior levels to meet the FCA's targets. Most large companies are publicly owned and listed on a registered stock exchange. Companies must comply with the FCA's Listing Rules (LRs) to do this legally in the UK. Different regimes exist based on the nature of the listing sought, but generally, companies list in the "premium" category. This is because many asset managers have a policy of excluding standard listed companies from their portfolios. The Premium Listing Rules were amended in 2022 to include requirements for Diversity and Inclusion (D&I) on corporate boards.

Under these rules, the FCA imposes diversity targets on a "comply or explain" basis.<sup>84</sup> If listed companies do not reach diversity targets, they will be required to write to the regulator with good reasons as to why they did not do so. For example, company boards are expected to be 40% female, and at least one should occupy a senior board position.<sup>85</sup> These requirements extend to ethnicity, too, with at least one board member expected to be from a minority ethnic (i.e. non-white) background. Non-compliance can lead to fines, suspension from trading, or delisting of a company's securities.

Disclosure is a weapon in the regulator's arsenal to catch financial misconduct or risky latent practices. It is also a way to put pressure on companies pre-emptively. The LR mentioned above board diversity targets are monitored through annual disclosures, but this approach is also used to push diversity on other committees and management bodies. The FCA imposes ongoing reporting obligations under the Disclosure and Transparency Rules (DTRs). One such disclosure is an annual corporate governance statement. The FCA requires listed companies to explain how they have followed a recognised corporate governance code in this statement and include other prescribed information.<sup>86</sup> In practice, the code selected is invariably the FRC's UK Corporate Governance Code 2018 (UK CGC) since numerous other FCA provisions state that they would be satisfied by that code. This is a case of regulatory code, which is voluntary *de jure* but compulsory *de facto* because compliance with other provisions of the FCA handbook would be highly impractical if any other code were selected. In the case of premium listed companies, compliance with the code is effectively compulsory because compliance with UK CGC's principles must be explained in the company's financial report.<sup>87</sup> At a theoretical level, governance is the least concerning aspect of ESG. There are real benefits to logical and consistent procedures within a company, even if the details of the UK CGC might impede efficiency. Problems arise when the FRC meddles in political matters like DEI and claims these are a necessary aspect of governance instead of a contested political belief.

The mandatory corporate governance statement under the DTRs must include a diversity policy addressing how age, gender, ethnicity, sexual orientation, disability or educational,

84. FCA Handbook, LR 9.8.6R (9) and LR 14.3.33R. <https://www.handbook.fca.org.uk/handbook/LR/9/8.html>, <https://www.handbook.fca.org.uk/handbook/LR/14/3.html>.

85. LR 9.8.6R (9) (ii). This is defined as: Chair, Chief Executive Officer (CEO), Senior Independent Director (SID) or Chief Financial Officer (CFO).

86. FCA Handbook, DTR 7.2.2, <https://www.handbook.fca.org.uk/handbook/DTR/7/2.html>.

87. FCA Handbook, LR 9.8, <https://www.handbook.fca.org.uk/handbook/LR/9/8.html>.

professional and socio-economic backgrounds and other characteristics are addressed across different leadership bodies in the company. There is also an ongoing reporting obligation on the effectiveness of the policy.<sup>88</sup> These rules are older than the regulations in LR and go back to 2018. It is also worth noting that their effect is potentially broader, going beyond the board of directors to other company officers. Once again, non-compliance can lead to fines, suspension from trading, or delisting of securities.

These regulations have proved a motivating factor in the spread of woke capitalism, alongside some similar rules approved by the American SEC.<sup>89</sup> This works at two interconnected levels. The LRs and DTRs act on companies, forcing them to alter their internal procedures and management structure. However, in doing this, they also create risk for asset managers who might see companies in their portfolio fined or delisted for breaches. In addition to influencing the behaviour of company directors, these rules encourage BlackRock, Vanguard, and State Street to adopt blanket ESG requirements across all their portfolios for risk minimisation purposes. This may be the true cause of "green-smuggling".

Such requirements are more effective than they might first appear despite only sometimes mandating specific actions. Reporting obligations seem like soft requirements since they do not impose perfect obligations regarding conduct. Yet their effectiveness is very great because they implant self-sustaining departments of activists within companies. The internal logic of job performance and personal conviction can lead HR, diversity staff or environmental compliance departments to go well beyond what the law requires. Since the disclosures mentioned above are to the public at large, not just to the regulator, their other importance is in feeding the ESG rating industry. This is another example of the symbiotic relationship between the ESG problem's regulatory side and institutional investors' role.

### **'Fitness and Propriety' Evaluations of Company Officer**

The FCA has a senior managers regime that determines the suitability of persons in positions of responsibility at regulated firms. On appointment, it conducts "fitness and propriety" assessments following three main criteria: "honesty, integrity and reputation", "competence and capability" and "financial soundness."<sup>90</sup> Over time, the FCA has focused more on disqualification misconduct, outside of abuse of company funds or criminal acts. The current rules are quite broad and cover non-criminal matters that could affect a firm's reputation or the perceived moral suitability of an individual.

The FCA plans to formally extend the criteria for fitness and propriety evaluations to matters connected to diversity and inclusion and modify the conduct rules for managers. In its new D&I proposal (see below), the FCA has stated that it will incorporate additional "non-financial misconduct" into evaluations to address diversity.<sup>91</sup> The extension of a regime originally intended to protect firms against fraud and embezzlement to ever more subjective judgments about behaviour seems ill-advised and attracted the ire of a group of Conservative MPs and

88. FCA Handbook, DTR 7.2.8AR (1) (c) - (d), <https://www.handbook.fca.org.uk/handbook/DTR/7/2.html>.

89. Skadden Arps, 'SEC Approves Nasdaq Board Diversity Listing Standards', September 2021, <https://www.skadden.com/insights/publications/2021/09/quarterly-insights/sec-approves-nasdaq-board-diversity-listing>.

90. FCA Handbook, FIT 2.1-2.3, <https://www.handbook.fca.org.uk/handbook/FIT/2/1.html>.

91. FCA Consultation Paper, Remuneration: Enhancing proportionality for dual-regulated firms, 2023, 1.4, 2.11, 2.17, <https://www.fca.org.uk/publication/consultation/cp23-11.pdf>.

Peers<sup>92</sup>. What this new “non-financial misconduct” entails has not been spelled out. Still, given the context of the consultation paper, it is likely to relate to the manager’s record of promoting diversity and attitudes towards DEI. It is possible that individuals could lose their ability to work in the UK financial services sector if an individual’s private political views or religious values are incompatible with the FCA’s expectations regarding diversity. The same consultation paper recommends that large firms be required to treat lack of diversity as a “non-financial risk”. They propose this because of their contention that non-diverse firms are prone to groupthink.<sup>93</sup> The FCA presumes a racial and sexual essentialism here by implying that diversity of intersectional characteristics is necessary for good management and governance. Many would argue that broad-minded thinking in the boardroom is a product of a variety of experience and knowledge as opposed to immutable biological characteristics. The language of “risk” is a way of forcing firms to construct their own EDI policing mechanisms when making promotion decisions. If diversity is a business risk, then a failure to take preventative action on that risk could be met with sanctions from the regulator.

## Climate Reporting

Listed companies were originally required to make TCFD-aligned disclosures under the FCA’s Listing Rules.<sup>94</sup> Since 2022, the FCA’s ESG 2 framework has expanded this beyond listed companies, making TCFD consistent disclosures mandatory for all regulated firms.<sup>95</sup> Given that amendments to primary legislation (see above) had already extended TCFD obligations to most firms, the real significance of this change relates to enforceability. The FCA and other regulators are duplicating TCFD requirements under external statutory instruments to bring it within their powers to monitor and sanction authorised companies. The FCA has the staff and budget to pursue companies that shirk these statutory obligations with zeal.

## Anti-greenwashing Measures

In November 2023, the FCA announced a structure for regulating the use of ESG language.<sup>96</sup> This had been several years in the making. The first part of this change is essentially a generalised anti-greenwashing provision.<sup>97</sup> There is also a regime for advertising ESG products. This would involve mandating the use of clear and accurate language, forcing managers to review their usage regularly, and requiring firms to notify the FCA if sustainability labels are used.<sup>98</sup> Finally, there is a new and even more detailed disclosure regime that applies only to ESG-marked funds.<sup>99</sup>

Whether these changes will improve or worsen the situation is still being determined. They draw attention to problematic behaviours within ESG, which could undermine the movement. In particular, the “anti-greenwashing rule” has been seen as progress on both sides of the political

92. Nick Fletcher MP, Twitter, 28 February 2024, <https://twitter.com/NickFletcherMP/status/1762835315721482665>

93. FCA CP 2023, 1.5, 5.89, <https://www.fca.org.uk/publication/consultation/cp23-11.pdf>.

94. FCA Handbook, LR 9.8.6R (8), <https://www.handbook.fca.org.uk/handbook/LR/9/8.html>.

95. FCA Handbook, ESG 2.1, <https://www.handbook.fca.org.uk/handbook/ESG/2/1.html>.

96. This is covered in the ESG 4 and ESG 5 provisions of the FCA Handbook.

97. FCA Handbook, ESG 4.3.1R, <https://www.handbook.fca.org.uk/handbook/ESG/4/3.html>.

98. FCA Handbook, ESG 4.3.2R, <https://www.handbook.fca.org.uk/handbook/ESG/4/3.html>; ESG 4.1.7R, <https://www.handbook.fca.org.uk/handbook/ESG/4/1.html>.

99. FCA Handbook, ESG 5, <https://www.handbook.fca.org.uk/handbook/ESG/5/1.html>.



aisle.<sup>100</sup> Yet such provisions run the risk of driving ESG into a purity spiral. It is true that the “greenwashing rule” has the potential to protect consumers from fraudulent advertising. Yet regulators seeking stricter criteria for green-labelled funds will likely accelerate the progress of woke capitalism by purifying ESG funds and forcing them to adopt more hard-line requirements for financing. It also does little to address a more concerning practice perpetrated by the investment managers and proxy advisers: “green-smuggling”. As Ramaswamy has noted, most connected investors are not seeking ESG funds and receiving less than promised; they are seeking apolitical portfolios and unknowingly being coerced into backing progressive ideas. If consumer choice were as free as possible and lightly regulated, this would not be much cause for concern. Investors should be free to put their money in their chosen funds, as long as they understand their investments. In reality, the combination of an ideological purity spiral, created by the progressive politics of certain asset managers and regulators’ decisions to embed ESG principles into their rules and guidance, erodes choice, competition, and freedom for investors.

### **A Proposed Parallel D&I Regime (FCA)**

In addition to the existing regulations described above, the FCA and PRA are currently consulting on proposals to introduce “a new parallel regulatory framework on Diversity and Inclusion (D&I) in the financial sector”<sup>101</sup> There are few checks and balances on the FCA as currently constituted. Today, The FCA is a sovereign regulator with huge leeway to act how it pleases following the Financial Services and Markets Act 2023. The industry funds it and is only accountable to parliament insofar that the Treasury Select Committee scrutinises it.

These regulators’ proposals are expected to be significantly more expansive than the current regime under the LRs and DTRs. The proposed regime reflects the prominence of D&I within the FCA’s overarching strategy announced in April 2022.<sup>102</sup> Since the new D&I framework is only at the consultation stage, it is difficult to determine what form it will eventually take but the FCA is likely to be far more interventionist than it has been hitherto. Some of the proposals discussed in the latest consultation paper include:

- D&I Strategies – requiring organisations to set diversity targets across the organisation, not just at the board level.
- Including non-financial misconduct in fitness and propriety assessments.
- Data Disclosure – more extensive disclosures breaking down the ethnic, gender, religious and sexual makeup of the organisation.
- Risk & Governance – treating lack of diversity as a form of regulated business risk.<sup>103</sup>

100. *The Financial Times*, Lucy Fisher and Kenza Bryan, 8 November 2023, ‘UK set to unveil regulatory regime for ESG ratings industry’, <https://www.ft.com/content/61a61fc5-fedd-4c01-bb24-99c1606d446d>.

101. ‘Diversity and inclusion in the financial sector – working together to drive change’, September 2023, <https://www.fca.org.uk/publication/consultation/cp23-20.pdf>.

102. FCA, ‘FCA: Our strategy 2022-2025’, see especially pp. 12 and 23, <https://www.fca.org.uk/publication/corporate/our-strategy-2022-25.pdf>.

103. FCA CP 2023, pp. 15-21, <https://www.fca.org.uk/publication/consultation/cp23-11.pdf>.

## B. The Prudential Regulatory Authority

The PRA is a division of the Bank of England focused on regulating banks and insurers. It reduces systemic risk by enforcing “ring-fencing” to separate retail banking from riskier investment work. It has been less ardent in promoting ESG than its sibling. In his letters to CEOs, the PRA's CEO, Sam Woods, has focused mainly on climate issues. However, a new parallel framework with the FCA has been announced on diversity and inclusion in 2023, representing an escalation of the PRA's buy-in to woke capitalism.

The main areas in which the PRA contributes to woke capitalism are as follows:

1. Scrutiny of board decisions.
2. Risk profile evaluations.
3. 'Fitness and propriety' evaluations of company officers.
4. A proposed parallel D&I regime.

### Scrutiny of Board Decisions

The PRA has a supervisory role that enables it to intervene in board decisions made by banks and insurers.<sup>104</sup> In years to come, they will likely use this power to direct companies that work in areas with negative ESG implications. The PRA's recent D&I consultation paper (discussed below) recommends using the supervisory process to ensure the boards of banks are taking action to change their organisation's demographics in pursuit of diversity benchmarks.<sup>105</sup>

### Risk Profile Evaluation

The PRA requires banks to assess hypothetical future circumstances which are increasingly imagined in terms of progressive assumptions about climate change.<sup>106</sup> This is treated as an aspect of “operational risk” that banks must consider as part of their stress-testing models and affects the size of their regulatory capital reserves. Regulatory capital refers to the proportion of deposits which the bank is prohibited from dealing with day-to-day as a buffer to protect its solvency.<sup>107</sup> Increasing regulatory capital requirements can be necessary to protect banks from collapsing in the event of a sudden wave of depositors withdrawing their savings. However, if they are not correctly calibrated, regulatory capital requirements will fruitlessly reduce the amount of money banks can lend. This undermines the bank's profitability, but more importantly, it reduces liquidity and growth opportunities in the UK economy.

104. PRA, 'Supervisory Statement SS5/16; Corporate governance: Board Responsibilities', July 2018, <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/supervisory-statement/2018/ss516update.pdf>.

105. PRA, 'CP18/23 – Diversity and inclusion in PRA-regulated firms', 25 September 2023, <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/september/diversity-and-inclusion-in-PRA-regulated-firms> (hereafter, PRA CP 2023), 4.7-4.8.

106. 'Bank of England report on climate-related risks and the regulatory capital frameworks', 13 March 2023, <https://www.bankofengland.co.uk/prudential-regulation/publication/2023/report-on-climate-related-risks-and-the-regulatory-capital-frameworks>.

107. PRA, 'Climate-related financial risk management and the role of capital requirements Prudential Regulation Authority Climate Change Adaptation Report 2021', October 2021, <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/2021/october/climate-change-adaptation-report-2021.pdf>

## **'Fitness and Propriety' Evaluations of Company Officers**

The PRA essentially plans to replicate the FCA's plans to expand evaluations to cover "non-financial misconduct", but it has not yet issued detailed guidance.<sup>108</sup>

### **A Proposed Parallel D&I Regime (PRA)**

The PRA's existing regulations have only mandated 'diversity' in the sense of relevant technical expertise within management bodies. However, their new consultation paper, produced in cooperation with the FCA, now proposes an extensive D&I regime. The paper itself states:

**Firm-wide diversity and inclusion strategies (Chapter 2)** – This chapter proposes to require firms to have and publish a firm-wide diversity and inclusion strategy. It also proposes expectations on the role of risk and control functions in supporting the strategy.

**Targets (Chapter 3)** – This chapter proposes that the most prominent firms would be required to set their diversity targets where they identify underrepresentation subject to a minimum of targets for women and ethnicity if underrepresentation is identified.

**Board governance (Chapter 4):** This chapter proposes requiring firms to have and publish a strategy specifically promoting diversity and inclusion on the board. It also proposes clarifying expectations on succession planning and board/board subcommittee responsibilities for diversity and inclusion.

**Individual accountability (Chapter 5)**—This chapter proposes an expectation that responsibility for diversity and inclusion be allocated to the relevant Senior Management Functions, with this reflected in Statements of Responsibilities, and that accountability measures be put in place. It also proposes to clarify that objective findings of patterns of behaviour such as bullying, discrimination, and harassment can be considered as part of fitness and propriety assessments.

**Monitoring diversity and inclusion (Chapter 6)** – This chapter proposes to require firms to monitor diversity and inclusion internally and to take appropriate actions where necessary.

**Regulatory reporting (Chapter 7)** – This chapter proposes to require the largest firms to report certain diversity and inclusion data alongside information on the targets they have set for themselves. The PRA and the FCA also propose to use this data to produce an aggregated industry-wide benchmarking report.

**Disclosure (Chapter 8)** – This chapter proposes to require the largest firms to disclose information on the targets they have set for themselves, the demographic diversity of their organisation, and the outcome of inclusion surveys.<sup>109</sup>

When examined in detail, many of these provisions mirror the language of the FCA proposal. They would integrate D&I into fitness and propriety checks, expand diversity targets to cover the whole organisation, and broaden reporting obligations.

108. PRA Consultation Paper 2023, 5.9-5.11, <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2023/september/cp1823-diversity-and-inclusion-in-pra-regulated-firms.pdf>.

109. PRA CP 2023, 1.20, <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/consultation-paper/2023/september/cp1823-diversity-and-inclusion-in-pra-regulated-firms.pdf>.

As with my analysis concerning the FCA, there are serious questions about how the PRA interprets its general objectives. The Act states that the PRA's raison d'être is "promoting the safety and soundness of PRA-authorized persons" (i.e. banks and insurance providers) to protect the stability of the UK economy.<sup>110</sup> It takes an extremely loose interpretation of the Act's language to justify D&I regulation as falling under this objective.

## C. The Financial Reporting Council (FRC)

The Financial Reporting Council creates guidance on auditing but also publishes two widely adopted regulatory codes that apply to companies. The first of these, the UK Stewardship Code, is focused on institutional investors and covers how they structure their portfolios and the purpose and strategy behind the investment. The second is the UK Corporate Governance Code. This scheme of rules concerns the internal operational procedures of large companies. Corporate governance is an area of law on the rise globally and has been another site of ESG infiltration.

### The UK Stewardship Code 2020

The UK Stewardship Code indicates how institutional investors are expected to behave and regulate their interactions with listed companies and their clients. It currently affects 277 signatories with £44.6 trillion in assets under management.<sup>111</sup> This is a "comply or explain" code which allows for a degree of flexibility in its implementation.<sup>112</sup> Institutional investors are named and shamed by the FRC through tiered lists, which rank their compliance with the code based on disclosures they return.

The FRC defines the notion of stewardship in terms that would excite the interest of a stakeholder capitalist: 'Stewardship is the responsible allocation, management and oversight of capital to create long-term value for clients and beneficiaries leading to sustainable benefits for the economy, the environment and society.'<sup>113</sup> The FRC takes the view that its responsibility goes beyond ensuring asset managers disclose their investment approach to clients and strays into environmental and social policy debates. This is reflected throughout the code. In particular, Principle 7 states that those bound by the Stewardship Code must 'systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities.' Principle 2 of the code also mandates the consideration of diversity when making investment decisions.

### The UK Corporate Governance Code 2018 (UK CGC)

Corporate governance is concerned with the relationships between different parts of an

110. UK Public Acts, 2000. Financial Services and Markets Act 2000, S 2B (2) <https://www.legislation.gov.uk/ukpga/2000/8/section/2B>.

111. *Pensions Age*, Sophie Smith, 'Backing for UK Stewardship Code reaches new high', 30 August 2023, <https://www.pensionsage.com/pa/FRC-adds-27-signatories-to-UK-stewardship-code.php>.

112. Norton Rose Fullbright, 'Stewardship Code and other guidance for institutional investors', <https://www.nortonrosefulbright.com/en/knowledge/resources-and-tools/uk-corporate-governance-portal/stewardship-code-and-other-guidance-for-institutional-investors>.

113. FRC, 'The UK Stewardship Code 2020', p. 4, [https://media.frc.org.uk/documents/The\\_UK\\_Stewardship\\_Code\\_2020.pdf](https://media.frc.org.uk/documents/The_UK_Stewardship_Code_2020.pdf).

organisation, its values, and the composition of its governing body. The FCA has made the use of a corporate governance code mandatory for listed companies, which adds an extra tier of procedure on top of general company law.<sup>114</sup> The UK CGC is the preferred code, and compliance with it will automatically meet a range of regulatory provisions. Still, diverting from it on a comply or explain basis is possible. Perhaps unsurprisingly, the FRC has seen the UK CGC as an opportunity to create pressure for EDI change. The organisation's chief executive stated, "A more diverse boardroom leads to better business outcomes, which is why the UK Corporate Governance Code, and now the UK Stewardship Code, requires companies and investors to promote diversity and inclusion".

Progressive expectations are woven into the fabric of the code. Provision 23 requires that the company's annual report should detail:

- the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and
- the gender balance of senior management and their direct reports.<sup>115</sup>

As with other codes, the UK CGC is drafted with broad 'principles' accompanying the more specific provisions. Several of these principles touch on diversity. Whilst acknowledging that merit and competence must be seriously considered, Principle J states that "companies [...] should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths." Principle L also specifies that the nomination committee should make diversity a feature of ongoing reviews: "annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives".

The intensity of focus on diversity has been increasing in business, and corporate governance has been one of the justifications for this process. Arguably, this has encouraged the self-perpetuating politicisation of boardrooms and the promotion of less competent directors. Early supporters of diversity initiatives in business are beginning to reconsider when faced with the consequences of these measures. Helena Morrissey, who founded the "30% club", which sought to increase the representation of women on corporate boards, has recently sounded the alarm that diversity drives are having adverse effects on governance. Whereas she had seen diversity initiatives as a means to undermine groupthink, she now suggests these same measures have created a different kind of groupthink.<sup>116</sup>

Under pressure from the Department for Business and Trade to remove red tape, the FRC scrapped many of its proposed changes to the UK CGC in 2023. These would have included diversity reporting requirements and new ESG duties for auditors.<sup>117</sup> This decision has prevented the situation from worsening, but the previous 2018 UK CGC remains in force and continues to undermine a meritocratic view of board composition.

114. FCA Handbook, DTR 7.2, <https://www.handbook.fca.org.uk/handbook/DTR/7/2.html>.

115. FRC, 'UK Corporate Governance Code 2018', p. 9, [https://media.frc.org.uk/documents/UK\\_Corporate\\_Governance\\_Code\\_2018.pdf](https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2018.pdf).

116. ARC Conference 2023, 'Helena Morrissey: The 30% Club and Good Governance', 27 Nov 2023, <https://www.youtube.com/watch?v=e8sov0asVYY>.

117. *The Financial Times*, Simon Foy and Michael O'Dwyer, 'FRC waters down UK boardroom reforms after government shift', 7 November 2023, <https://www.ft.com/content/c747992c-4e23-4afb-9037-4458001c440e>.

## D. The Competition and Markets Authority (CMA)

Vivek Ramaswamy has written powerfully about the potential of ESG to produce cartel-like supply-side reduction behaviour within the oil industry.<sup>118</sup> The Competition and Markets Authority (CMA) is the UK's primary competition regulator and is run by a board of directors as an independent non-ministerial department. Rather than pushing back on this behaviour, the CMA has plans to relax its enforcement of relevant competition law. Cartels are caught by the Chapter I prohibition in the Competition Act 1998, which makes agreements that restrict or distort competition unlawful.<sup>119</sup> But the CMA's new guidance on the interpretation of the Chapter I prohibition suggests that they are willing to ignore the usual rules when it comes to companies pursuing the green agenda.<sup>120</sup> Recent guidance states that:

*"Given the scale and urgency of the challenge to ensure environmental sustainability, particularly to combat climate change, and the degree of public concern about such issues, the CMA is keen to help businesses take action on climate change and environmental sustainability, without undue fear of breaching competition law. The CMA has made a public commitment to promoting environmental sustainability and to helping accelerate the transition to a net zero economy. This Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements ('this Guidance') forms an important part of the CMA's wider work in this area."<sup>121</sup>*

Whilst the CMA will still block the most extreme anti-competitive arrangements, it will give special treatment to less egregious agreements that restrict competition. A two-tier system that treats ESG-aligned companies differently is ripe for exploitation by companies wishing to secure unfair benefits. In essence, the CMA is incentivising risky behaviour to accomplish political goals outside the scope of its professional expertise.

One of the CMA's other core responsibilities is approving or blocking mergers.<sup>122</sup> Mergers can create benefits for the companies concerned and sometimes for the consumer or the markets they act within. However, they pose a risk of consolidating control over markets and so diminishing competition. The CMA is consulting to determine how to approach merger control for green businesses. They are considering treating the sustainability and environmental performance of a company as a mitigating factor in deciding whether or not to block a merger.<sup>123</sup> This would be done by reading environmental health into the statutory definition of a "relevant customer benefit". This stretches the bounds of the laws under which it operates. The Competition Act

118. Ramaswamy, *Capitalist Punishment*, pp. 94-96.

119. UK Public Acts 1998. s 2(1) Competition Act 1998, <https://www.legislation.gov.uk/ukpga/1998/41/section/2>.

120. CMA, 'CMA Green Agreements Guidance: Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements', 12 October 2023, [https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green\\_agreements\\_guidance\\_.pdf](https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green_agreements_guidance_.pdf).

121. CMA, 'CMA Green Agreements Guidance', 1.5-1.6, [https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green\\_agreements\\_guidance\\_.pdf](https://assets.publishing.service.gov.uk/media/6526b81b244f8e000d8e742c/Green_agreements_guidance_.pdf)

122. These are situations where a company purchases a substantial stake in another company or otherwise obtains a significant degree of control.

123. CMA, 'CMA: Merger Assessment Guidelines', 18 March 2021,

[https://assets.publishing.service.gov.uk/media/61f952dd8fa8f5388690df76/MAGs\\_for\\_publication\\_2021\\_--\\_.pdf](https://assets.publishing.service.gov.uk/media/61f952dd8fa8f5388690df76/MAGs_for_publication_2021_--_.pdf) see Para 8.21.



limits this to “lower prices, higher quality or greater choice of goods or services’ or ‘greater innovation in relation to such goods or services’<sup>124</sup> Such benefits would be weighed against the extent to which the merger would lessen competition, so the most extreme cases would still be frustrated.<sup>125</sup> It is another situation where companies would gain a lot from cynically positioning themselves in alignment with the regulator’s environmental politics. Mergers are complicated to reverse after the fact, and improperly allowing one to take place can significantly affect consumers. It might reasonably be asked why companies pursuing climate goals should be treated differently than others. After all, the ordinary operation of the free market is likely to optimise best for *both* quality and price in a new market of green products. This would be essential to the longevity of any proposed green transition. This stands in contrast with the CMA’s other flagship policy, the establishment of the Digital Markets Unit, which is being given statutory powers to increase antitrust enforcement against global tech platforms, particularly around mergers.<sup>126</sup> This is not just an inconsistent application of antitrust policy, but one which could create perverse incentives.

## E. The Pensions Regulator (TPR)

The Pensions Regulator oversees work-based pension schemes in the UK. In 2021, it was granted extensive new powers concerning climate change.<sup>127</sup> These include the ability to require disclosures and alter a pension scheme’s terms. It is currently requiring all schemes with more than a hundred members to publish a statement of investment principles (SIP), which will include a discussion of how they approach ESG issues.<sup>128</sup> They must also publish an implementation statement (IS) to explain how these are applied in their investment strategy. As mentioned, schemes with assets under management at over a billion dollars are also required by a statutory instrument to comply with the TCFD environmental disclosures.<sup>129</sup>

## F. The Investment Association (IA) Guidelines

The Investment Association (IA) is a trade body representing institutional investors in the UK with £8.8 trillion assets under management. It is not a regulator in any formal sense, but it produces guidelines for investee companies dictating the investors’ preferred structure and reporting arrangements. Although these are voluntary guidelines from a legal perspective, their weight in terms of market practice is considerable. If companies decide not to follow the guidelines, they risk locking themselves out of support from the most influential investors in the country. This is how a ratchet effect, which turns voluntary measures into compulsory requirements, sets

124. UK Public Acts 2002. S 30(1)(a) Enterprise Act 2002, <https://www.legislation.gov.uk/ukpga/2002/40/section/131>.

125. ‘Environmental sustainability and the competition and consumer law regimes Advice to the Secretary of State for Business, Energy and Industrial Strategy’, 29 September 2021, 32-38, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1021364/CFL\\_-\\_sustainability\\_advice\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1021364/CFL_-_sustainability_advice_.pdf)

126. Stephen Dnes, Fred de Fossard. *The Digital Markets, Competition and Consumers Bill: How to protect prosperity and innovation in the digital economy*, Legatum Institute, December 2023, [https://li.com/wp-content/uploads/2023/12/4543\\_LI\\_DMCC\\_Main\\_AW-Web.pdf](https://li.com/wp-content/uploads/2023/12/4543_LI_DMCC_Main_AW-Web.pdf)

127. UK Public Acts 2021. S 124 Pension Schemes Act 2021 <https://www.legislation.gov.uk/ukpga/2021/1/section/124>.

128. TPR, ‘The Pensions Regulator increases its focus on climate and ESG non-compliance’, 22 February 2023, <https://www.thepensionsregulator.gov.uk/en/media-hub/press-releases/2023-press-releases/the-pensions-regulator-increases-its-focus-on-climate-and-esg-non-compliance>.

129. TPR, ‘Governance and reporting of climate-related risks and opportunities’, September 2022, <https://www.thepensionsregulator.gov.uk/en/document-library/scheme-management-detailed-guidance/funding-and-investment-detailed-guidance/climate-related-governance-and-reporting>.

in. The guidelines are too complex to give a complete account of in this report. It will suffice to list the IA's stated priorities for shareholders over the past four years to get a sense of their ideological bent:

2020 <sup>130</sup>	2021 <sup>131</sup>	2022 <sup>132</sup>	2023 <sup>133</sup>
Responding to climate change	Responding to climate change	Responding to climate change	Responding to climate change
Audit quality	Audit quality	Accounting for climate change	Accounting for climate change
Stakeholder engagement	Stakeholder engagement	Audit quality	Audit quality
Diversity	Diversity	Diversity	Diversity
		Stakeholder engagement	Stakeholder engagement

These priorities documents are intended to communicate the consensus of institutional investors to listed companies to inform the motions that their board tables at a general meeting. Other than "audit quality", all of these concerns fall within the remit of ESG and outside of what the man on the street might expect investors to be concerned with. The emergence of the "accounting for climate change" as a priority in 2022 manifests the rollout of the TCFD disclosures.

The IA's guidelines are both a mirror of broader attitudes and an agent of change. In some ways, they merely reflect the positions of asset managers that the IA interacts with and are shaped by the regulatory framework those managers are subject to. However, this is not the whole story. The IA's codification of expectations has a real effect on the behaviour of corporate boards. So powerful are institutional investors that the IA guidance might be said to be analogous to the force of "comply or explain" regulations. The risk of "sanctions" here looks like divestment or shareholder reprisals against the board rather than a statutory fee. The IA operates its proxy advisory system applicable to UK companies: the Institutional Voting Information Service (IVIS). Scrutiny of the shareholder priorities documents cited above will indicate that IVIS uses its "traffic light" system to advise institutional investors to divest from companies that do not play ball on ESG.

130. IA, 'Shareholder Priorities for 2020 – Supporting Long Term Value in UK Listed Companies', January 2020, <https://www.theia.org/sites/default/files/2020-02/FINAL%20-%20Shareholder%20Priorities%20for%202020.pdf>.

131. IA, 'Shareholder Priorities for 2021 Supporting Long Term Value in UK Listed Companies January 2021' <https://www.theia.org/sites/default/files/2021-01/IA%20Shareholder%20Priorities%202021%20.pdf>

132. 'IA Shareholder Priorities and IVIS approach for 2022', [https://www.theia.org/sites/default/files/2022-03/IA%20Shareholder%20Priorities%20and%20IVIS%20approach%20for%202022\\_1.pdf](https://www.theia.org/sites/default/files/2022-03/IA%20Shareholder%20Priorities%20and%20IVIS%20approach%20for%202022_1.pdf).

133. IA, 'Shareholder Priorities For 2023 Supporting Long-Term Value in UK Listed Companies', February 2023, <https://www.theia.org/sites/default/files/2023-02/Shareholder%20Priorities%202023.pdf>.

**Part II: Prognosis and Cure**

# Reversing the Damage Done by Woke Capitalism

---

## 5. The Social and Economic Cost of Woke Capitalism

The focus of unease around ESG has been consumer deception. No doubt this is an authentic problem, but it is secondary to the most damaging aspect of woke capitalism. Most people's direct experience of woke capitalism is of radical political messaging which companies output. Striking recent examples include Marks and Spencer's LGBT sandwich and a Costa banner featuring "top surgery" scars.<sup>134</sup> Divisive racial and sexual identity politics are commonplace, as is encouraging questionable lifestyle choices in the name of fostering inclusion – endorsement of the "body positivity" movement springs to mind. It is not just promotions but the products built around ideology. Corporate politics now intrudes on the private sphere, populating homes, offices and schools with identitarian rhetoric. Some of these products are aimed at children or would be readily seen by children, yet they convey adult messages about sexuality or gender identity. Mattel, the creator of Barbie, has recently launched "gender neutral" and "body positive" versions of their dolls.<sup>135</sup> Lego is another toy manufacturer with a gender-neutral range, along with a set of rainbow-coloured figurines in honour of Pride Month.<sup>136</sup>

With almost limitless resources in the hands of corporate groups like Nestle and Unilever, they have generated propaganda with an intensity that has never been seen outside of wartime – and with a global reach that was hitherto impossible. One potential purpose of corporate virtue signalling is to attract investment from asset managers by announcing the company's "values" in the most public way possible. This may also be a compliance strategy in a system where relationships with the regulator count for as much as the letter of the law. Advertising also communicates submission to the progressive values of regulators and buy-in to their strategic goals. This may not be altogether Machiavellian for some directors. There will be a minority of committed believers, but many more centrists, gently sympathetic to liberal causes, are swept up in the collective imaginary of stakeholder capitalism. This story is similar to that seen in the civil service and the administrative state.

Directors and financiers are part of a social class insulated against the social effects of the ideas they advocate for. Rob Henderson's theory of "luxury beliefs" describes the disastrous downstream effects of fashionable opinions that provide status for graduates of prestigious universities.<sup>137</sup> Ideas like abolishing law enforcement and belief in the equal benefit of all family structures are classic luxury beliefs. Marriage rates have collapsed for the poor whilst remaining relatively similar among the wealthiest in society; police abolition matters little to those who

134. *The Independent*, Laura Sharman, 'Costa Coffee defends mural of post-op trans man after boycott threat', 01 August 2023, <https://www.independent.co.uk/news/uk/home-news/costa-coffee-trans-man-mural-b2385455.html>; 'Pride and joy: At M&S, we believe in supporting diversity and this year we're honouring the LGBT movement with a very special sandwich', <https://www.marksandspencer.com/ie/c/food/not-just-any-food/food-news/pride-sandwich?>

135. *The Guardian*, André Wheeler, "'It was time': maker of Barbie launches line of gender-neutral dolls', 25 September 2019, <https://www.theguardian.com/lifeandstyle/2019/sep/25/barbie-maker-gender-neutral-dolls-release>.

136. *The Daily Mail*, Zak Wheeler, 'Lego sparks outrage over its new gender-neutral collection as company is accused of forcing 'woke' ideology on Australian children', 3 May 2023, <https://www.dailymail.co.uk/news/article-12040069/Lego-gender-neutral-toys-forcing-woke-ideology-Australian-children-experts-say.html>.

137. *New York Post*, Rob Henderson, "Luxury beliefs" are the latest status symbol for rich Americans', 17 August 2019, <https://nypost.com/2019/08/17/luxury-beliefs-are-the-latest-status-symbol-for-rich-americans/>.

reside in gated communities far from the tumult of the inner city. Woke capitalism is a luxury belief; it puffs the egos of corporate executives while its negative effects are experienced by consumers and those who imitate its messages.

Another pitfall of woke capitalism is more strictly financial. ESG's lack of fundamental substance could create systemic economic problems. At the very least, ESG is syphoning money away from more productive investments, thereby slowing potential growth. Regulators are tasked with protecting the consumer and the economic system at large. Yet they have not taken the risk of ESG overvaluation seriously enough and have cheered the growth of the ESG movement. It calls to mind the role of credit rating agencies in rubber stamping the bad debt that spread throughout the global economy in 2008 through collateralised mortgage obligations.

In some cases, divestment also has negative geopolitical implications. Several ministers, current and former, have now warned that ESG divestment from Britain's defence sector leaves us vulnerable.<sup>138</sup> Following the outbreak of the war in Ukraine, the defence sector has made some progress in paring back ESG regulations, which limited access to capital for defence companies in Britain and Europe.<sup>139</sup>

For a long time, ESG funds have claimed to provide a greater return on investment than other funds. Yet the fundamental economics does not convince. The rapid growth of ESG and its basis in non-quantitative factors suggests the existence of a financial bubble.<sup>140</sup> It has many hallmarks of artificial growth: muddled complexity, lack of standardisation and the manipulation of human emotions. It plays on identities and moral sentiments and promises people the chance to have their cake and eat it by profiting off "doing good". The implausible past performance of ESG funds probably reflects the temporary boost that hype and free-flowing investment in the era of low interest rates provide in a speculative bubble. In the last year, the performance of these funds has dramatically declined, and there is a chance that a recession may trigger the collapse of the tower of speculative valuation.<sup>141</sup>

The similarity of many ESG funds to other passive equity funds will at least limit the extent of possible overvaluation. Yet other areas of ESG-related financial risk have received too little attention. Sustainability-linked loans (SLLs) now provide debt finance based on a company's ecological performance. Of course, creditworthiness is still considered, but optimising for two factors rather than for a single factor will always produce less reliable results. The larger this becomes, the greater the risk of systemic default. This is similar to the policy decisions taken in the United States which contributed to the 2008 crash, by encouraging lending to people who did not meet usual credit checks. The SLL industry may be distributing questionable debts and this area demands closer investigation by economists. Politicising debt is a dangerous game and, as the graph below indicates, green debt is now its industry:

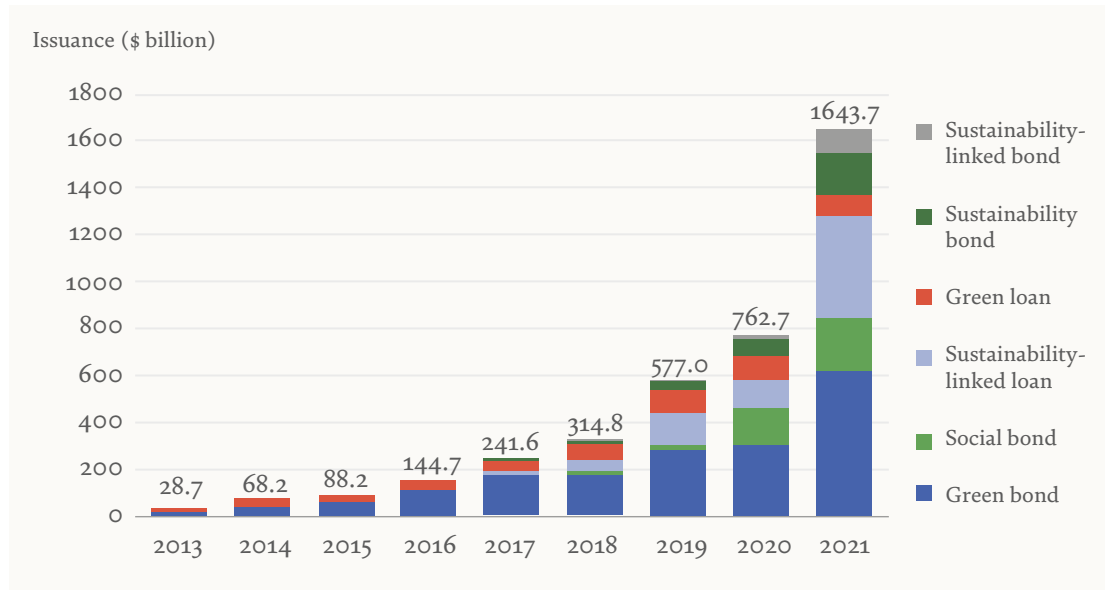
138. 'Joint opinion piece on ESG (July 2023): Treasury Minister, Andrew Griffith, and Defence Minister, James Cartlidge, wrote in July 2023 about Environmental, Social and Governance (ESG) criteria', <https://www.gov.uk/government/news/joint-opinion-piece-on-esg-july-2023>. William Hague, 'British complacency over defence has to end', 20 November 2023, <https://www.thetimes.co.uk/article/britains-been-complacent-about-defence-for-too-long-f8tj0tfqk>. Valeria Martinez, 'Defence secretary Grant Shapps: ESG considerations risk undermining UK defence industry', 14 September 2023, <https://www.investmentweek.co.uk/news/4125430/defence-secretary-grant-shapps-esg-considerations-risk-undermining-uk-defence-industry>.

139. Peggy Hollinger, 'Ukraine war prompts investor rethink of ESG and the defence sector', *Financial Times*, 9 March 2022, <https://www.ft.com/content/c4d4fe6a-2c95-4352-ab88-c4e3cdb60bba>

140. This was noted by Ramaswamy in 2021 *Woke Inc*, pp. 106-25.

141. *The Financial Times*, Steve Johnson, 'ESG ETFs fail to shine over past 10 years', 27 September 2023, <https://www.ft.com/content/68c033be-542a-4d2e-ba72-e043946002b6>.

## The Growth in so-called Sustainable Debt<sup>142</sup>



Politicised debt also populates the bond market, and even the UK government is issuing its own verdant Treasury gilts.<sup>143</sup> The valuations of some of these debt products are beginning to be questioned by professional investors in capital markets.<sup>144</sup>

ESG may not increase the value of producer companies, but it does provide significant returns for lawyers, accountants, diversity consultants and the HR industry. Woke capitalism has undermined the quality of what consumers receive by diverting billions of pounds into what are arguably parasitic industries. The relaxation of enforcing competition law planned for ESG-conforming companies is likely to exacerbate adverse effects for consumers. When burdensome ESG policies become widespread and a condition of investment, this encourages the growth of oligopolies. The extensive disclosure and hiring burdens described above create barriers to entry that advantage existing players. Even where formal regulation does not exist, the ESG industry generates immense public relations pressure to conform to practices like diversity hiring, which hit smaller companies harder. The end effect is, once again, passed on to the consumer.

The puzzle of consumer expectations deserves a final word. In classical economic theory, producers are responsive to consumer demand in a healthy economy. Yet the declining popularity of ESG investing indicates a disconnect between the outpouring of woke products and what consumers want.<sup>145</sup> This report has concentrated on how overly-centralised financing and regulatory systems create misaligned incentive structures that decouple corporate

142. *Bloomberg*, Saijel Kishan, 'ESG by the Numbers: Sustainable Investing Set Records in 2021', 3 February 2022, <https://www.bloomberg.com/news/articles/2022-02-03/esg-by-the-numbers-sustainable-investing-set-records-in-2021?leadSource=uverify%20wall>.

143. UK Office for Debt Management, 'Green gilt issuance', <https://www.dmo.gov.uk/responsibilities/green-gilts/>.

144. *Capital Monitor* Nick Herbert, 'A vanishing greenium', 7 November 2023, <https://capitalmonitor.ai/asset-Thisclass/fixed-income/a-vanishing-greenium/>.

145. The Association of Investment Companies, ESG investing declining in popularity as fears of greenwashing grow, 9 October 2023, <https://www.theaic.co.uk/aic/news/press-releases/esg-investing-declining-in-popularity-as-fears-of-greenwashing-grow>



decision-making from the demands of consumers. Companies “re-educate” the consumer in the social values of an elite class of financiers in the top 1% of 1% of the global income distribution. Rather than responding to authentic demand, demand is manufactured through propagandistic advertising. The lack of practical alternatives reinforces this as competitors imitate one another’s approach. The oligopoly of asset managers is permitted and encouraged to operate as they do by an overbearing regulatory state. A parade of mysterious acronyms writes the rules that determine the operation of financial markets whilst remaining anonymous to the populous and unaccountable to them. This makes a mockery of debates about whether woke capitalism is ideological or cynical. If woke capitalism results in expensive and onerous regulation, erroneous security valuations, and exposes global markets to credit risk, that will remain true, whether authentic ideology or a fig leaf for profiteering and corporate self-aggrandisement.

## 6. Conclusion and Policy Recommendations

---

This chapter concludes with policy recommendations that can be implemented quickly to reverse woke capitalism in Britain. Some of these are legislative, requiring statutory instruments to deliver, while others can be achieved through guidance and engagement with regulators.

1. Clarify the Strategic Objectives of UK financial regulators with existing powers.
2. Produce new statutory guidance to the FCA to exclude diversity and inclusion from their remit and reassert their existing statutory objectives (Guidance).
3. Exclude diversity and inclusion from the FCA's regulatory principles (Guidance).
4. Disapply the Public Sector Equality Duty from the Financial Conduct Authority and the Prudential Regulation Authority (Legislation).
5. Reverse the reporting requirements which expand woke capitalism and harm prosperity.
6. Formally discourage the Competition and Markets Authority and the Financial Reporting Council from weakening competition law to fulfil ESG goals (Guidance).
7. A Statutory Prohibition on Debanking for businesses as well as consumers (Legislation).

We find ourselves living at a time when companies rival nations in their power and influence. Walmart's revenue exceeds the tax inflows of Spain, Austria, and the Netherlands individually.<sup>146</sup> While nations remain divided on contentious issues, the business world thrives on commercial certainty. The corollary of this is a political monoculture that will brook no opposition. Politicians are handed limited power for a defined term, subject to accountability mechanisms like the ballot box and the confidence of their political parties.

In contrast, the power structure of a company is more autocratic. The CEO and a few crucial directors entrusted with most day-to-day decisions and shareholder meetings give annual assent to matters of constitutional importance for the company. This structure is efficient and wholly appropriate for commerce, but it is a disastrous arrangement through which to negotiate the complexities of public policy in a pluralist society. The paper has described the damage companies do to our culture by spreading divisive ideology through their advertising and products. It has also suggested that financiers blindly multiply risk in our financial system, which manifests in the reckless distortion of share valuations within ESG, which suggests that lofty political goals may be distracting lenders on SLLs from the creditworthiness of their borrowers. Finally, the growth of ESG is jeopardising our national security. Asset managers inadvertently wage economic warfare against the state and national security by designating BAE and Rolls-Royce as "sin stocks", and contributing to a wave of de-banking felt by British defence companies.

CEOs may be monarchs within their kingdoms, but they are puppets of the wider financial system. The real power lies with the asset managers who pull on their marionette strings.

146. *The Conversation*, Milan Babic, Eelke Heemskerk, Jan Fichtner, 'Who is more powerful – states or corporations?', 10 July 2018, <https://theconversation.com/who-is-more-powerful-states-or-corporations-99616>.

Power has become centralised in finance through the growth of passive investment, with institutional investors now holding as much as 80% of the global equity market by value.<sup>147</sup> Wall Street's biggest fish can entice directors to change their policies by dangling the bait of future cash. They can wield shared voting rights as a stick to remove directors who do not adopt progressive policies. Asset managers often outsource the task to like-minded proxy advisers or mechanically follow recommendations from trade associations like the IA. This produces an even tighter consolidation of power in favour of a few decision-makers. The politicisation of investment is especially galling since these companies are using their clients' money to shill for causes they may disagree with. Like it or not, we are all implicated in this problem – anyone with a pension or assets in a mutual fund is feeding the investment machine. Some of the most important asset managers have recently dialled back ESG language, which has been redolent of pushback from US legislators. However, these same investors have retained trillions of dollars invested under ESG principles, and their retreat could be more rhetorical than substantive. In Britain, investors back woke capitalism out of necessity and by choice due to our regulatory environment where ESG is fast achieving the full force of law.

These problems are manageable even if they call for swift action. Below is a series of targeted policy responses to the significant issues raised. The focal point is regulation since the most change is likely to be achieved here, and a good deal could be accomplished outside of legislation in the realm of guidance. It should be a priority because the regulatory problem is self-perpetuating. If they are not appropriately directed, these bodies will continue to expand the remit of woke capitalism into new areas as they develop their codes.

### **UK Financial Regulators: Clarifying Statutory Objectives**

The response to woke capitalism that is likely to have the highest impact in Britain is to correct the behaviour of regulators. This can be done by Parliament and the Government through changes to law and guidance. Regulators encourage woke capitalism through their immediate impact on companies, but just as important is their effect on the psychology of asset managers looking to minimise portfolio risk. All the public regulators discussed in this paper are responsive in some way or other to government guidance. This is even true of independent regulators established through primary legislation; however, the strategy used to deliver guidance must differ here. Tackling the politicisation of financial regulators is an achievable goal.

For example, ministers have different powers to change the disclosures and reporting requirements mandated on businesses.

Regarding the Task Force on Climate-related Disclosure requirements, there are three powers which can be used to depoliticise the reporting rules imposed on companies:

**Companies:** the enabling power for The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022 appears under section 468 of the Companies Act 2006. This states that the Secretary of State can make regulations to amend the part of CA 2006 that deals with reporting.

**LLPs:** the enabling power for The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022 is section 15 of the Limited Liability Partnerships Act 2000. This

147. *Pension and Investments*, '80% of equity market cap held by institutions', 25 April 2017, <https://www.pionline.com/article/20170425/INTERACTIVE/170429926/80-of-equity-market-cap-held-by-institutions>.

states that the Secretary of State may make regulations to incorporate relevant elements of company law into the law concerning partnerships. This was used to create the 2008 Regulations which were later amended to add the TCFD disclosures by the 2022 Regulations.

**Pensions:** The enabling power for the Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021 is section 113 of the Pension Schemes Act 1993, which states that the Secretary of State may make regulations to specify disclosures regarding personal and occupational pension schemes.

Regarding wider acceptance of ESG on a statutory level, consider amending:

S 2 (2) (b) (vi) of the Occupational Pension Scheme (Investment) Regulations 2005: this requires pension managers to include the following in their Statement of Investment Principles:

“the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments”

Section 35 of the Pensions Act 1995 provides the enabling power for this, allowing Regulations to apply the section.

These powers have been available to ministers for many years, and to date they have been used to increase regulatory burdens and force progressive outcomes. It is time for these powers to be used to reverse this.

## The FCA and the PRA

We recommend a two-limb response to the primary financial regulators, which will inhibit future woke regulation by clarifying their statutory objectives. Concentrating on statutory objectives is wise because it gets to the core of the power structure of these regulators. By contrast, objecting to individual regulations is, at best a sticking plaster solution that would have limited impact on the regulators' future activities. The first recommendation is that the Treasury exercise its statutory powers to issue guidance concerning the objectives of the FCA and the PRA to explicitly exclude diversity and inclusion from their remit. The second recommendation is that the “regulatory principles” that contextualise how the regulators pursue their statutory objectives are modified to state that diversity and inclusion are excluded.<sup>148</sup> The second recommendation would have a greater impact but is likely more challenging to implement as it would require legislation. Ideally, both solutions would be pursued concurrently.

Guidance has the benefit of being fast to enact, and it can often be sufficient to achieve the desired outcome. A specific statutory mechanism entitles the Treasury to issue guidance to the FCA (under section 1JA of FSMA 2000) and the PRA (under section 30b of the Bank of England Act 1998). This statutory guidance has more weight than normal Treasury guidance and should be preferred. It is intended to allow the government to coordinate with the regulator in developing their economic policy agenda and steer the regulator toward the meaning of their overriding objectives. The guidance is ultimately advisory, and the wording of both provisions

148. UK Public Acts 2000. S 3B Financial Services and Markets Act 2000 <https://www.legislation.gov.uk/ukpga/2000/8/section/3B>.

is that of having “regard”.

Nevertheless, the political weight of this guidance would be significant. Since the mechanism is statutory, it represents an accountability check anticipated by Parliament in granting the independence of the regulators. These provisions have been bolstered by FSMA 2023, which amends them to create a “comply or explain” obligation that the regulators owe to the Treasury once guidance is issued.<sup>149</sup> A literal construction of the statutory objectives of both regulators would exclude D&I because only financial objectives are contemplated. The guidance must clarify this against the regulators’ account of the objectives which tends to interpolate stakeholder capitalist concepts. Those creative interpretations are in evidence in the “rule making” activities of the FCA and PRA. It would be pragmatic to concentrate on excluding D&I in the guidance. Recent regulation has formally brought environmental matters within the remit of these regulators and Net Zero by 2050 remains government policy.<sup>150</sup> In any event, the major changes proposed by the PRA and FCA for 2024 take the form of a D&I framework.

The second strategy is to amend the “regulatory principles” in section 3B of FSMA 2000. These principles must be considered when making regulations, so adding a new principle that specifies that D&I is beyond the scope of the statutory objectives would be effective.<sup>151</sup> If either regulator continued to make regulations in conflict with the principles they could likely be nullified through judicial review on the grounds of illegality since they would be acting *ultra vires*. The inclusion of a new secondary ‘strategic objective’ for both regulators in FSMA 2023 will be a relevant context for the framing of guidance.<sup>152</sup> D&I regulations are a burden that undermines UK companies’ competitiveness and ability to enact meritocratic hiring practices. As well as clarifying the original meaning of the main operational objectives of the regulators, guidance and modification of regulatory principles would emphasise the need to drive competitiveness and growth.

The FCA and the PRA have a high degree of independence, but their boards are primarily appointed by the Treasury. FSMA indicates that the Treasury has an oversight role for both regulators and the board of the FCA can be called before the Treasury Select Committee.<sup>153</sup> Additionally, the Financial Policy Committee (FPC) of the Bank of England can make recommendations to both regulators which will be followed on a comply or explain basis.<sup>154</sup> If it were impossible to clarify the regulator’s objectives under the aforementioned statutory powers, a softer approach would be to issue guidance via the FPC or for the Treasury to exercise pressure on the FCA and the PRA via bilateral meetings with board members. The priority in such cases would be the reversal of the impending parallel D&I framework proposed in the September 2023 consultation papers.

149. UK Public Acts 2023, S 35 Financial Services and Markets Act 2023 <https://www.legislation.gov.uk/ukpga/2023/29/section/35/2023-06-29>.

150. UK Public Acts 2023, S 27 Financial Services and Markets Act 2023 <https://www.legislation.gov.uk/ukpga/2023/29/section/27>.

151. UK Public Acts 2000, S 1B(5)(a) Financial Services and Markets Act 2000 <https://www.legislation.gov.uk/ukpga/2000/8/section/1B>.

152. UK Public Acts 2023, S 25 Financial Services and Markets Act 2023 <https://www.legislation.gov.uk/ukpga/2023/29/section/25>.

153. The Treasury’s appointment and oversight role is outlined in ‘Corporate governance of the Financial Conduct Authority’, August 2023, <https://www.fca.org.uk/publication/corporate/fca-corporate-governance.pdf>.

154. Bank of England, ‘Financial Policy Committee’, <https://www.bankofengland.co.uk/about/people/financial-policy-committee> [accessed 19 December 2023].

Repealing existing regulations is not straightforward and may require legislation. Using the strategy of clarifying statutory objectives may lead to a gradual removal of woke regulations. Both regulators are required to keep past rules under review in the light of their statutory objectives.<sup>155</sup> The Treasury does not have direct power to repeal most regulations and, in the interests of preserving independence, it prefers not to interfere with the minutiae of individual provisions.<sup>156</sup> If the FCA or PRA did not honour their review obligations, then statutory repeal and amendment of existing regulations could be contemplated (see Appendix B for relevant provisions).

To complete this task, ministers should also remove the FCA and PRA from the Public Sector Equality Duty remit. The FCA and the PRA are bound to follow the Public Sector Equality Duty, which demands they pay due regard to equality law and act to advance equality in their operation. Recent press coverage around the regulators' controversial DEI consultations suggests that the FCA believes its compliance with the duty warrants these new regulations. We can debate whether the regulator is "gold plating" equality law by doing this, as suggested by the Business Secretary,<sup>157</sup> but without legal reform, the risk of this gold plating is always present. If we wish regulators to stop applying public sector equality rules to private businesses, then legislation should be considered.

Ministers can remove the duty from the FCA and the PRA by amending Schedule 19 of the Equality Act. By removing the duty and changing the guidance that governs the regulators above, the Government can significantly reduce the damage of regulators' diversity and inclusion policies and clarify that they stand outside their legal objectives and duties. This will not prevent the regulators from implementing their non-discrimination policies for their internal management. Still, it should stop the unwelcome intrusion of these practices into the private sector by regulatory order.

## The FRC and the CMA

It is recommended that the Department for Business and Trade (DBT) engages with the board of the CMA to discourage the weakening of competition in law enforcement to fulfil ESG objectives. This should concentrate on the 'Chapter I prohibition' and the issue of merger control. Likewise, engagement with the board of the FRC could ensure that ESG provisions are removed from the UK Stewardship Code 2020 at the next review (see Appendix B). The FRC and the CMA are under the oversight of DBT. In contrast to the FCA and the PRA, these regulators have less independence. They are more likely to be responsive to guidance from the Secretary of State for Business, who appoints the board of both regulators. DBT's successful intervention in the 2023 UK CGC consultation demonstrates the effectiveness of timely communication with the FRC board. In November 2023, DBT published its latest Strategic Steer to the CMA. This important, non-binding document states the Government's approach to competition policy. While it did not refer to ESG, it placed a heavy emphasis on the importance of cutting costs for consumers

155. UK Public Acts 2000. S 3RA Financial Services and Markets Act 2000 <https://www.legislation.gov.uk/ukpga/2000/8/chapter/3/crossheading/rules>.

156. S UK Public Acts 2000. 3RE Financial Services and Markets Act 2000 <https://www.legislation.gov.uk/ukpga/2000/8/chapter/3/crossheading/rules>.

157. Katherine Griffiths and Ellen Milligan, 'UK Ministers blasts diversity proposals by financial regulators', Bloomberg UK, 18 April 2024 <https://www.bloomberg.com/news/articles/2024-04-18/uk-minister-blasts-diversity-proposals-by-financial-regulators?embedded-checkout=true>



and linked this to preventing unnecessary market concentration.<sup>158</sup> The Government should reiterate the importance of this in light of the CMA's decision to reduce antitrust requirements for green projects.

If engagement with the boards of either regulator fails to yield results, formal guidance can be issued which will have more weight but at the expense of greater publicity.<sup>159</sup> The force of guidance will vary because both regulators have different levels of autonomy. As a non-ministerial department created by statute, the CMA has more independence than the FRC, but it is still required to take account of guidance from the DBT in pursuing its statutory objects.<sup>160</sup> The FRC operates as a company limited by guarantee but has powers delegated to it by the government or, in the case of audit, by statute. Therefore, the FRC is particularly receptive to guidance since it is unrestricted by statutory objectives requiring more independent consideration.

## A government oversight framework on industry guidance

A facet of the regulatory problem that needs to be addressed is the homogeneity of market practice, which grows around guidance codes issued by trade associations. Suppose it is a trade custom for all large organisations to follow guidelines created by organisations like the IA, the Pre-Emption Group, or the Loan Market Association. In that case, those organisations acquire a status comparable to that of a regulator. Several existing government regulators started life as private organisations concerning the Takeover Panel. The accountability problem for private regulators fulfilling a public function has been discussed above. It is a problem familiar to academics in international law faced with bodies like the World Trade Organization.<sup>161</sup> Addressing this is more straightforward in a domestic context, but new legislation would be needed for the government to direct these organisations, and its framing would require careful thought.<sup>162</sup> The role of these private regulatory organisations is an essential but little-studied facet of the dilemma of woke capitalism.

## A Statutory Prohibition on De-banking

De-banking is a simpler issue, and the UK has already acted to combat it. This year, the Chancellor

158. 'Strategic Steer to the Competition and Markets Authority 2023', Department for Business and Trade, November 2023, <https://www.gov.uk/government/publications/strategic-steer-to-the-competition-and-markets-authority-2023/strategic-steer-to-the-competition-and-markets-authority-2023>

159. 'Framework Agreement Between: The Competition and Markets Authority and the Department For Business, Energy And Industrial Strategy', 2021, [https://assets.publishing.service.gov.uk/media/611e2563d3bf7f63a7b2926c/CMA\\_BEIS\\_Framework\\_Agreement.pdf](https://assets.publishing.service.gov.uk/media/611e2563d3bf7f63a7b2926c/CMA_BEIS_Framework_Agreement.pdf). See particularly, 6.5: 'The Chair should enable the Board to take consistent, proportionate and fair decisions, ensuring that the Board takes into account any relevant guidance offered by the Secretary of State for BEIS, where appropriate and where doing so would not affect or compromise the Board's independent decision-making.'

'Framework Document Between Department for Business, Energy and Industrial Strategy and The Financial Reporting Council', 11 May 2022, [https://media.frc.org.uk/documents/FRC\\_-\\_BEIS\\_Framework\\_Document\\_May\\_2022.pdf](https://media.frc.org.uk/documents/FRC_-_BEIS_Framework_Document_May_2022.pdf). See particularly 1.21: '[the Board] is responsible for ensuring [...] that the board operates within the limits of its statutory authority and any delegated authority agreed with BEIS, and in accordance with any other conditions relating to the use of public funds; and that, in reaching decisions, the board takes into account guidance issued by BEIS as the sponsor department'.

160. The CMA is created by Part 3 and 4 of the Enterprise and Regulatory Reform Act 2013 and its operations are explained by Schedule 4.

161. Schepel Harm, 'Private Regulators in Law', in Oxford, 2012, Joost Pauwelyn, Ramses Wessel, and Jan Wouters, ed by, *Informal International Lawmaking*, <https://doi.org/10.1093/acprof:oso/9780199658589.003.0017> [accessed 19 December 2023].

162. The detail of such proposals falls beyond the scope of this report.

of the Exchequer has directed the PRA and FCA to modify their “threshold conditions” which banks are required to abide by, ensuring they uphold customer free speech. This also creates procedural hurdles to closing accounts.<sup>163</sup> However, under this solution enforcement will depend upon the willingness of the regulator to pursue breaches. The FCA has previously understated the risks of debanking, and this paper highlights the regulator’s complicity in woke capitalism. Therefore, it might now be prudent to bring primary legislation to prohibit de-banking.<sup>164</sup> A law to prevent credit institutions and payment providers from withholding services based on political viewpoints would protect consumers from the “de-risking” culture illustrated above. Liability for interfering with freedom of expression would reverse the calculus on risk, ensuring that the purse strings do not drag society into a forced consensus. We have a model for this kind of legislation in the form of the Equality Act’s direct and indirect discrimination provisions. Analogous wording could be drafted for political viewpoint in place of the protected characteristics within the domain of companies with deposit-taking and credit issuance functions. Enforcement might allow for civil action by the disadvantaged consumer and statutory penalties that the Secretary of State could impose. De-banking is a pressing issue because of the drive towards a cashless society. If Britain phases in central bank-backed digital currencies, de-banking will amount to the total ostracism of those individuals from society.

MPs have proposed such a law. In 2023, Sir Jacob Rees-Mogg MP tabled amendments to the Digital Markets, Competition and Consumers Bill to prohibit politicised de-banking. This amendment was supported by 13 other MPs.<sup>165</sup> In response, the Government announced that it would legislate to stop de-banking and “protect free speech”.<sup>166</sup> It has published a draft of the Statutory Instrument to that effect, which will mandate greater standards of transparency and opportunities for appeal for those who have had their bank accounts terminated.<sup>167</sup> The Instrument, as written, still provides a significant amount of leeway to financial institutions with which they can terminate payment accounts if they suspect account holders are implicated in serious crimes like money laundering or terrorism. It will be important to see how this Instrument is used once in force and whether politicised de-banking, like that which happened to Nigel Farage, or the overzealous application of Politically Exposed Person rules will end. Following the General Election, it is imperative that a new government completes this legislation.

163. ‘Tougher rules to stamp out debanking’, 2 October 2023, <https://www.gov.uk/government/news/tougher-rules-to-stamp-out-debanking>.

164. *This is Money*, Helen Kirrane, ‘Banks Aren’t closing current accounts for political views, FCA says’, 11 September 2023, <https://www.thisismoney.co.uk/money/saving/article-12535325/Banks-AREN'T-closing-current-accounts-political-views-FCA-says.html>.

165. UK Parliament, Digital Markets Bill, Amendment paper, Friday 17<sup>th</sup> November 2023, [https://publications.parliament.uk/pa/bills/cbill/58-04/0003/amend/digitalmarkets\\_rm\\_rep\\_1117.pdf](https://publications.parliament.uk/pa/bills/cbill/58-04/0003/amend/digitalmarkets_rm_rep_1117.pdf)

166. UK Government, Tougher rules to stamp out debanking, 2<sup>nd</sup> October 2023, <https://www.gov.uk/government/news/tougher-rules-to-stamp-out-debanking>

167. HM Treasury, ‘The Payment Services and Payment Accounts (Contract Terminations) (Amendment) Regulations 2024,’ March 2024, [https://assets.publishing.service.gov.uk/media/65f18801981227a772f61311/DRAFT\\_SI\\_The\\_Payment\\_Services\\_and\\_Payment\\_Accounts\\_Contract\\_Terminations\\_Regulations\\_2024.pdf](https://assets.publishing.service.gov.uk/media/65f18801981227a772f61311/DRAFT_SI_The_Payment_Services_and_Payment_Accounts_Contract_Terminations_Regulations_2024.pdf)

# Appendix

---

## Appendix: List of Main UK Regulations Encouraging Woke Capitalism

This appendix is a selective listing of some important regulatory provisions which could easily be removed and have negative political implications for UK companies, as explained in the body of the report. It briefly summarises or excerpts the provisions. It does not cover the very extensive proposed regulations in 2023 which have not yet come into force.

### FCA: Listing Rules (LR)

**LR 9.8.6R (9):** A requirement that companies describe the ethnic and gender makeup of their board of directors in terms of both overall quotas and the seniority of minority members within the board. If they fall short of the quotas described by the FCA in this Rule, they must draw this to the attention of the FCA and provide the regulator with a suitable written justification.

(<https://www.handbook.fca.org.uk/handbook/LR/9/8.html#D129064>)

**LR 14.3.33R:** A provision requiring companies to include a board diversity statement in their annual financial report to shareholders describing whether the board's composition conforms to the FCA's D&I targets. These targets are identical to those included in LR 9.8.6R (9).

(<https://www.handbook.fca.org.uk/handbook/LR/14/3.html>)

### FCA: Disclosure and Transparency Rules (DTR)

**DTR 7.2.8AR (1)-(2):** Corporate Governance Statements: a requirement for UK listed companies to disclose to the public a detailed diversity policy addressing age, gender, ethnicity, sexual orientation, disability or educational, professional and socio-economic backgrounds and other characteristics. A continuous reporting obligation on the results of the policy. If the company fails to make these disclosures, they must draw this to the attention of the regulator and provide them with a written justification.

(<https://www.handbook.fca.org.uk/handbook/DTR/7/2.html#D48>)

### FRC: UK Stewardship Code 2020

**Principle 2:** Signatories governance, resources and incentives support stewardship

Signatories should explain how:

[...]

- they have appropriately resourced stewardship activities, including:
  - their chosen organisational and workforce structures;
  - their seniority, experience, qualifications, training and diversity;
  - their investment in systems, processes, research and analysis;

- the extent to which service providers were used and the services they provided;

**Principle 7:** Signatories systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities.

([https://media.frc.org.uk/documents/The\\_UK\\_Stewardship\\_Code\\_2020.pdf](https://media.frc.org.uk/documents/The_UK_Stewardship_Code_2020.pdf))

### **FRC: UK Corporate Governance Code 2018**

**Principle L:** Annual evaluation of the board should consider its composition, diversity and how effectively members work together to achieve objectives. Individual evaluation should demonstrate whether each director continues to contribute effectively.

([https://media.frc.org.uk/documents/UK\\_Corporate\\_Governance\\_Code\\_2018.pdf](https://media.frc.org.uk/documents/UK_Corporate_Governance_Code_2018.pdf))

**Provision 23:** The annual report should describe the work of the nomination committee, including:

- the process used in relation to appointments, its approach to succession planning and how both support developing a diverse pipeline;
- how the board evaluation has been conducted, the nature and extent of an external evaluator's contact with the board and individual directors, the outcomes and actions taken, and how it has or will influence board composition;
- the policy on diversity and inclusion, its objectives and linkage to company strategy, how it has been implemented and progress on achieving the objectives; and
- the gender balance of senior management<sup>6</sup> and their direct reports.

Appointments to the board should be subject to a formal, rigorous, and transparent procedure, and an effective succession plan should be maintained for the board and senior management. Both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, and cognitive and personal strengths.

# Bibliography

---

- ADV Ratings. (2024) BlackRock: Assets under Management (AUM) 2024.
- Arjalies, D, "ESG Backlash in the US: what implications for corporations and investors?", *Financial Times*, 2023
- Babic M, Heemskerck, E and Fichtner, J. "Who is more powerful – states or corporations?", *The Conversation*, 10 July 2018
- Bank of England "Report on climate-related risks and the regulatory capital frameworks", 13 March 2023
- Binnie, I. "BlackRock's Fink says he's stopped using "weaponised" term ESG", *Reuters* 26 June 2023
- BlackRock, 'Larry Fink's Annual Letter to CEOs: A Sense of Purpose', 2018
- Bryan, K. "ESG ratings: whose interests do they serve?", *Financial Times*, 2023
- CitiBank, "Closing the Racial Inequality Gaps: The Economic Cost of Black Inequality in the U.S.", September 2020
- ClientEarth, "ClientEarth files climate risk lawsuit against Shell's Board with support from institutional investors", 9 February 2023
- ClientEarth, "Investor Briefing Redirecting Shell: Derivative claim against the Board of Shell plc", 31 March 2022
- ClientEarth, "Our Impact", 2023
- Climate Case Chart. (2009) *R (People and Planet) v HM Treasury*
- Coburn, P. "Radical Chic Charities", *The Critic*, 2023
- Competition and Markets Authority, "CMA: Merger Assessment Guidelines", 18 March 2021
- Competition and Markets Authority, "CMA Green Agreements Guidance", 12 October 2023
- Competition and Markets Authority, "Environmental sustainability and the competition and consumer law regimes Advice to the Secretary of State for Business, Energy and Industrial Strategy", 29 September 2021
- Competition and Markets Authority, "Framework Agreement Between: The Competition and Markets Authority and the Department For Business, Energy And Industrial Strategy", 2021
- Conchie, C and Dorrell, C. "More Brits believe in aliens than understand ESG: new polling" *City AM*, 11 October 2023
- Davidson, S and Hargreaves, S. (2023). "Who Benefits? The Real Impact of ESG Investing". ARC Research
- Department for Business and Trade 'Strategic Steer to the Competition and Markets Authority 2023', November 2023
- Dnes, S and de Fossard, F. (2023), "The Digital Markets, Competition and Consumers Bill: How to protect prosperity and innovation in the digital economy", Legatum Institute.
- Douthat, R, "The Rise of Woke Capital", *New York Times*, 28 February 2018
- Driebusch, C. "IPO Documents Can Cost \$900,000. No One Really Reads Them", *Wall Street Journal*, 5 December 2023
- European Commission, Primary and Secondary Markets in the EU, final report, November 2020
- Financial Conduct Authority, "Consultation Paper, Remuneration: Enhancing proportionality for dual-regulated firms", 2023

- Financial Conduct Authority, "Diversity and inclusion in the financial sector – working together to drive change", September 2023
- Financial Conduct Authority, "FCA: Our strategy 2022-2025"
- Financial Conduct Authority, Corporate Governance, August 2023
- Financial Conduct Authority, Handbook
- Financial Reporting Council, "The UK Stewardship Code 2020", 2020
- Financial Reporting Council, "Framework Document Between Department for Business, Energy and Industrial Strategy and The Financial Reporting Council", 11 May 2022
- Financial Reporting Council, "UK Corporate Governance Code 2018", 2018
- Fisher, L and Kenza Bryan, K. "UK set to unveil regulatory regime for ESG ratings industry", *Financial Times*, 2023
- Foy, S and O'Dwyer, M. "FRC waters down UK boardroom reforms after government shift", *Financial Times*, 2023
- Friends of the Earth, "*Using the Law to Defend the Environment*", 2023
- Glass Lewis, "2023 Policy Guidelines"
- Goodkind, N. "ESG has lost its meaning. One advocate says let's throw it in the trash", *CNN Business*, 3 October 2023
- Greenpeace "Legal Unit", 2023
- Griffiths, K and Milligan, E. "UK Ministers blasts diversity proposals by financial regulators", *Bloomberg UK*, 18 April 2024
- Harinam, V. "Is Woke Capitalism Profitable?", *Quillette*, 21 July 2020
- Harm, S. (2012). Private Regulators in Law. *Informal International Lawmaking*, ed. Pauwelyn et al, Oxford University Press
- Henderson, R. "Luxury beliefs" are the latest status symbol for rich Americans", *New York Post*, 17 August 2019
- Herbert, N, "A vanishing greenium", *Capital Monitor*, 7 November 2023
- HM Treasury, "Tougher rules to stamp out debanking", 2 October 2023
- HM Treasury, "The Payment Services and Payment Accounts (Contract Terminations) (Amendment) Regulations 2024," March 2024
- Hollinger, P, "Ukraine war prompts investor rethink of ESG and the defence sector", *Financial Times*, 9 March 2022
- HSBC. "A Practitioner's Guide to Net Zero for Banks", 2021
- Institutional Shareholder Services Inc, "ISS United Kingdom and Ireland: Proxy Voting Guidelines Benchmark Policy Recommendations 2023", 2023
- Investment Association, "Shareholder Priorities and IVIS approach for 2022", 2022
- Investment Association, "Shareholder Priorities for 2021 Supporting Long Term Value in UK Listed Companies", January 2021
- Investment Association, "Shareholder Priorities For 2023 Supporting Long-Term Value in UK Listed Companies", February 2023
- Investment Association, 'Shareholder Priorities for 2020 – Supporting Long Term Value in UK Listed Companies', January 2020
- Johnson, S. "ESG ETFs fail to shine over past 10 years", *Financial Times*, 2023
- Jones, A and Washington P, "ESG Backlash Is Real and Growing. What to Know", *Barons Magazine*, 22 August 2023
- Kirrane, H. "Banks Aren't closing current accounts for political views, FCA says", *This is Money* 2023
- Kishan, S, "ESG by the Numbers: Sustainable Investing Set Records in 2021", *Bloomberg* 3 February 2022
- Larson, Z. (2020). The Sullivan Principles: South Africa, Apartheid, and Globalization, *Diplomatic History* 44:3. 479-503.



- Lohmann, C, Möllenhoff, S and Lehner, S, (2024), "On the Relationship between Financial Distress and ESG Scores", *S&P Global Market Intelligence Research Paper Series*
- Lumberg, J. "A History of Impact Investing", *Investopedia*, 11 September 2022
- Malcolmson, W, "The Problem with the Diversity Dividend", *Quillette*, 2022
- McKinsey & Company, "Managing Financed Emissions: How Banks Can Support the Net-Zero Transition".
- Meredith, S. "Oil giant Shell posts highest-ever annual profit of \$40 billion", *CNBC*, 2 February 2023
- Morrissey, H. "*Helena Morrissey: The 30% Club and Good Governance*", ARC Conference, 27 Nov 2023
- Norrie, R. (2023). "*The Radical Progressive University Guide*," Civitas
- Norton Rose Fullbright, "Stewardship Code and other guidance for institutional investors".
- Office for Budget Responsibility, "Overview of the March 2021 Economic and fiscal outlook", 3 March 2021
- Pension and Investments, "80% of equity market cap held by institutions", 25 April 2017
- Pilkington, P and Collingwood, A. "Multipolarity: Episode 33. The ESG Fad Implodes, Dim Sum Bonds, Russia's GDP Overtaking Germany", YouTube, 11 August 2023
- Prudential Regulation Authority, "Climate-related financial risk management and the role of capital requirements Prudential Regulation Authority Climate Change Adaptation Report 2021", October 2021
- Prudential Regulation Authority, "Consultation Paper CP18/23 – Diversity and inclusion in PRA-regulated firms", 25 September 2023
- Prudential Regulation Authority, "Supervisory Statement SS5/16; Corporate governance: Board", 2016
- Pryde, N. "ESG in 2023: Who Cares Wins?", *DLA Piper* 7 March 2023
- Rach, S. "FCA to simplify listing rules", *FT Advisers*, 3 May 2023
- Ramasamy, V. (2023). *Capitalist Punishment: How Wall Street is Using Your Money to Create a Country You Didn't Vote For*. Broadside Books.
- Ramaswamy, V. (2021). *Woke Inc: Inside the Corporate Social Justice Scam*. Swift.
- Rathi, N, "A strategy for positive sustainable change: A speech by our CEO, Nikhil Rathi, delivered at COP26", *Financial Conduct Authority*, 3 November 2021
- Rayner, G. "Coutts closed Nigel Farage's account because he didn't "align with their values"", *The Daily Telegraph*, 18 July 2023
- Rhodes, C. (2022). *Woke Capitalism: How Corporate Morality is Sabotaging Democracy*, University of Bristol Press.
- Rickett, D. "BlackRock and Vanguard increase hold over FTSE 100", *Financial News*, 21 July 2020
- Rozado, D. "Where did the Great Awakening come from? New research shows an abrupt post-2010 surge in academia and the media", *UnHerd*, 2022
- Saad, L, "ESG not making waves with American public", *Gallup*, 22 May 2023
- Segal, M. "EU Market Regulator Finds 4x Increase in Use of ESG Language in Fund Names", *ESG Today*, 3 October 2023
- Sharman, L. "Costa Coffee defends mural of post-op trans man after boycott threat", *Independent*, 2023
- Skadden, Arps, Slate, Meagher & Flom LLP, "SEC Approves Nasdaq Board Diversity Listing Standards", September 2021
- Smith, E.B., "Bringing Down Wall Street as Ratings Let Loose Subprime Scourge", *Bloomberg* 24 September 2008
- Smith, S. "Backing for UK Stewardship Code reaches new high", *Pensions Age*, 30 August 2023

- Son, H. "Goldman won't take companies public without "at least one diverse board candidate", CEO says", *CNBC*, 23 January 2020
- Temple-West, P. "S&P drops ESG scores from debt ratings amid scrutiny", *Financial Times*, 2023
- The Association of Investment Companies, "ESG investing declining in popularity as fears of greenwashing grow", 9 October 2023
- The Pensions Regulator, "Governance and reporting of climate-related risks and opportunities", September 2022
- The Pensions Regulator, "The Pensions Regulator increases its focus on climate and ESG non-compliance", 22 February 2023
- The Wall Street Journal, Podcast, "Larry Fink on ESG, the Economy and the State of Democracy", 2023
- The World Bank, "The World Development Indicators"
- The World Bank, "Who Cares Wins", 2004
- TheCityUK. (2023). "Key facts about UK-based financial and related professional services 2023".
- Thomas, M. "How the Democrats became the party of the rich", *UnHerd*, May 12 2022
- Thomson Reuters Practical Law, *R v Panel on Take-overs and Mergers; Ex parte Datafin plc (1987) QB 815*
- Transparency International, "On Politically Exposed Persons, De-Risking and The Fight Against Corruption", 28 June 2023
- UK Government, "Tougher rules to stamp out debanking," 2023
- UK Office for Debt Management, "Green gilt issuance"
- UK Parliament, Digital Markets Bill, Amendment paper, Friday 17th November 2023
- UK Public Acts 1998, *Competition Act 1998*
- UK Public Acts 2002, *Enterprise Act 2002*
- UK Public Acts 2010, *Equality Act 2010*
- UK Public Acts 2011, *Charities Act 2011*
- UK Public Acts 2021, *Pension Schemes Act 2021*
- UK Public Acts 2023, *Financial Services and Markets Act 2023*
- UK Statutory Instruments, 2021, *Occupational Pension Schemes (Climate Change Governance and Reporting) Regulations 2021*.
- UK Statutory Instruments, *The Companies (Strategic Report) (Climate-related Financial Disclosure) Regulations 2022*.
- UK Statutory Instruments, *The Limited Liability Partnerships (Climate-related Financial Disclosure) Regulations 2022*.
- UnHerd, editorial, "It's Official: Labour is No Longer the Party of the Poor", *UnHerd*, 2020
- United States Securities and Exchange Commission, "Twitter, Inc: Quarterly Report Pursuant to Section 13 or 15(D) of The Securities Exchange Act Of 1934 for the Quarterly Period Ended March 31, 2022", 2022
- Wheeler, A. "'It was time': maker of Barbie launches line of gender-neutral dolls", *The Guardian* 2019
- Wheeler, Z, "Lego sparks outrage over its new gender-neutral collection as company is accused of forcing 'woke' ideology on Australian children", *Daily Mail*, 3 May 2023
- Woolcock, N. "Stonewall 'gave bad advice' to university in free speech row", *The Times*, 20 May 2021"
- Yowell P, (2021), *"The Future of Equality: Why it is time to review the Equality Act 2010"*, Policy Exchange.

**LEGATUM INSTITUTE**

11 Charles Street  
London W1J 5DW  
United Kingdom  
t: +44 (0) 20 7148 5400 | [www.li.com](http://www.li.com)

June 2024

Legatum Institute Limited is a private limited company incorporated in England and Wales (Company Number 14543238)

