

## UK corporate governance – Key developments in 2023

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Over the last twelve months, the UK has seen plenty of interesting developments in the corporate governance sphere. This client update provides an overview of some of the key developments relevant to UK listed companies.

### Review of 2023 corporate reporting and AGM activity

#### Review of corporate governance reporting

On 16 November 2023, the Financial Reporting Council (FRC) published its latest [annual review of corporate governance reporting](#) (Review of Corporate Governance Reporting). Overall, the FRC noted that it is pleased to see improvements in corporate governance reporting but that more work is still needed to meet stakeholder expectations.

The FRC found that, in line with the flexible nature of the UK Corporate Governance Code (Governance Code), companies are more transparent in reporting their departures from the Governance Code's provisions. By way of a reminder, the Governance Code allows companies that are subject to it to depart from its provisions (but not its principles) provided that clear explanations are given as to how such departing companies have maintained effective governance. While the FRC welcomes this as a positive development, it highlights that explanations sometimes lack clarity and that companies should ensure they are reporting to a consistently high standard across the entirety of their annual reports.

The FRC also found improvement in companies' reporting on engagement with their workforce and stakeholders and it encourages companies to continue to build on this progress by ensuring that the feedback received and its impact on board decisions are included in their reporting. The FRC, however, also noted that, disappointingly, it continues to find too many examples of unconvincing boilerplate reporting, which fail to meet stakeholder expectations and that year-on-year reporting on risk assessments and internal controls has not made significant improvements, with the majority of reviewed companies failing to demonstrate the operation of sufficiently robust systems, governance and oversight in respect of those areas.

Overall, according to a [report](#) published by Practical Law's What's Market on 20 November 2023, providing insights and reporting on trends from the 2023 reporting season (Annual Reporting and AGMs 2023), 49% of the FTSE 100 companies reviewed by Practical Law have disclosed full compliance with the Governance Code (in comparison to 39% during 2022).

#### Review of climate-related reporting

This year's reviews of climate-related reporting note a steady momentum in companies disclosing information in line with the Taskforce on Climate-related Financial Disclosures (TCFD) framework but emphasise that more progress is still needed. The FRC, in its Review of Corporate Governance Reporting (linked above), noted that out of the 100 premium listed companies reviewed, 57 stated that they had provided disclosures fully consistent with the TCFD framework, and

43 companies stated they were partially consistent with the TCFD recommendations and recommended disclosures (where some disclosures were not provided or provided only in part). By way of a reminder, both premium and standard listed companies are required under the Listing Rules to include a statement in their annual reports setting out whether they have made climate-related financial disclosures consistent with the TCFD recommendations and recommended disclosures.

Similarly, the TCFD, in its [2023 Status Report](#) (TCFD 2023 Status Report), which examined publicly available reports of more than 1,350 large companies in specific sectors around the world over a three-year period, reports that for fiscal year 2022, 58% of reviewed companies disclosed in line with at least five of the 11 recommended disclosures (up from 18% in 2020), but that only 4% disclosed in line with all 11. Six years after the publication of the TCFD framework, which has become the foundation for national and international climate-related disclosures, the TCFD confirmed that its 2023 Status Report is its final report. It is expected that responsibility for monitoring companies' progress on climate-related disclosures going forward will be assumed by the International Sustainability Standards Board (ISSB).

## Review of AGM activity

In October 2023, proxy agent Georgeson published its [2023 European AGM Season Review](#), providing a comprehensive analysis of annual general meeting trends across nine major European markets. In terms of the UK, Georgeson notes that in the 2023 AGM season:

- there was a reduction in the number of negative recommendations by proxy advisers across almost all proposal categories and yet the number of resolutions that faced significant dissent remained the same – by way of an example, with respect to compensation resolutions, one in five of these resolutions had been contested;
- the most contested resolution category was the share issuances resolution category, with 46 of share issuance proposals in the FTSE 100 having received over 10% opposition (a 130% increase from 2022). In its review, Georgeson notes that this increase can largely be attributed to investors pushing back against companies seeking to issue shares without pre-emptive rights up to the new 10% + 10% level that is now permitted by the Pre-Emption Group's 2022 Statement of Principles (PEG 2022 Statement of Principles);
- there has also been an increase in traditional shareholder activism, with investors pushing boards to improve margins, increase capital efficiency and de-lever balance sheets (in the context of corporates grappling with cooling economies and the earnings sapping effect of higher costs of capital), as well as M&A proposals activism, with active institutional investors increasingly pushing bidders for better deal terms; and
- while climate activism and climate protests at AGMs were not infrequent, there has been a reduction in the number of climate-related resolutions. For companies that did face a shareholder proposal, Georgeson found an overall decrease in the support level for climate activists, which according to Georgeson is not unexpected and reflects the outcomes of positive dialogue between investors and boards, the improving sophistication of analysis and policy setting, and an overall development of all parties on climate issues.

Additional insights into 2023 AGM trends have been provided by Practical Law in its Annual Reporting and AGMs 2023 review. To highlight a few findings, Practical Law found that:

- this AGM seasons has once again been dominated by in-person meetings (with around 80% of companies holding a physical meeting this year, and only two companies conducting fully virtual AGMs (both FTSE 250));
- nearly half of the companies reviewed by Practical Law sought the additional headroom afforded by the PEG 2022 Statement of Principles when seeking authority to disapply pre-emption provisions; and
- eight FTSE 350 companies tabled climate-related resolutions at their 2023 AGM (down from 17 in 2022).

For a full overview of Practical Law's findings (including in respect of annual reporting trends) please refer to Practical Law's Annual Reporting and AGMs 2023 review, which has been linked above (for reference, see also Practical Law's [legal update](#)).

## Glass Lewis publishes 2024 voting guidelines

In November 2023, proxy adviser Glass Lewis published its [2024 Benchmark Policy Guidelines](#) for UK listed companies. Glass Lewis evaluates its policy guidelines on an ongoing basis and formally updates them on an annual basis. This year's revisions focus on:

- director attendance at meetings (Glass Lewis recommends voting against the re-election of directors that failed to attend either: (i) at least 75% of board meetings; or (ii) an aggregate of 75% of board and applicable committee meetings, subject to potential exceptions for directors in their first year of service on a board or when the company discloses mitigating circumstances for a director's poor attendance record);
- interlocking directorships (specifying, amongst other things, that Glass Lewis considers both public and private companies);
- director accountability for climate-related issues; and
- cyber-risk oversight by directors (specifying that, in instances where a company has been materially impacted by a cyber-attack, Glass Lewis may recommend against appropriate directors should it find the board's oversight, response or disclosures concerning cybersecurity-related issues to be insufficient or not provided to shareholders at all).

## Climate-related developments

On 26 June 2023, the ISSB issued its inaugural global sustainability disclosure standards, [IFRS S1 \(General Requirements for Disclosure of Sustainability-related Financial Information\)](#) and [IFRS S2 \(Climate-related Disclosures\)](#). The disclosure standards, which incorporate TCFD recommendations and will be effective in respect of annual reporting periods from 1 January 2024, are aimed at assisting companies in disclosing their sustainability and climate-related risks and opportunities. With respect to the UK, IFRS S1 and IFRS S2 will only be available for use by UK companies once the standards are endorsed by the UK government. It is expected that the UK government will endorse and adopt the IFRS standards by way of creating the UK Sustainability Disclosure Standards (UK SDS). While it is expected that UK SDS will be based on the global IFRS S1 and IFRS S2 standards, to ensure that disclosures are globally comparable for investors, the UK government indicated that UK SDS may divert from the ISSB baseline if absolutely necessary for UK-specific matters. The UK government is expected to consider the endorsement of the IFRS standards, to create UK SDS, by July 2024 (see the UK government's [guidance](#) for further information).

On 18 September 2023, the Taskforce on Nature-related Financial Disclosures published its [final recommendations for nature-related risk management and disclosure](#) (TNFD Recommendations). The TNFD Recommendations build on the recommendations of the TCFD (replicating the four TCFD disclosure pillars and 11 TCFD recommended disclosures) and are consistent with ISSB's inaugural global sustainability standards. The TNFD noted in its [press release](#) that the publication of 14 recommended disclosures and a suite of additional implementation guidance marks the culmination of a two-year consultative development process, including pilot testing by over 200 companies and financial institutions. Adoption of the TNFD Recommendations is voluntary.

On 9 October 2023, the Transition Plan Taskforce (TPT), which was launched by HM Treasury in April 2022 to develop the gold standard for private sector climate transition plans, published its [final climate transition plans Disclosure Framework](#) (TPT Disclosure Framework). The TPT Disclosure Framework complements and builds on the ISSB framework (in particular IFRS S2) and builds on the Glasgow Financial Alliance for Net Zero for transition planning. The aim of the TPT Disclosure Framework is to help organisations set out a credible and robust climate transition plan as part of annual reporting on forward business strategy, as well as assist in reporting against ISSB standards and beyond (see also [TPT summary recommendations](#)).

The Financial Conduct Authority (FCA) is expected to consult in the first half of 2024 on its proposals to implement disclosure rules referencing the UK-endorsed IFRS S1 and IFRS S2, once they are endorsed by the UK, as well as its guidance setting out the expectation for listed companies' transition plan disclosures (drawing on the TPT Disclosure Framework). The FCA confirmed that its current intention is to finalise its policy position by the end of 2024, with a view to bringing the new requirements into force for accounting periods beginning on or after 1 January 2025 (with the first reporting beginning from 2026).

## UK Sustainability Disclosure Requirements and investment labels

On 28 November 2023, the FCA issued a policy statement [PS23/16: Sustainability Disclosure Requirements \(SDR\) and investment labels](#), setting out its final rules and guidance to help consumers navigate the market for sustainable investment products. The FCA stated that the aim of the regime is to help underpin the UK's position as a world-leading competitive centre for asset management and sustainable finance.

In summary, in its package of measures, the FCA is introducing:

- an anti-greenwashing rule for all FCA-authorized firms to reinforce that sustainability-related claims must be fair, clear and not misleading (with consultation on supporting guidance);
- naming and marketing rules for investment products, to ensure the use of sustainability-related terms is accurate;
- four labels to help consumers navigate the investment product landscape and enhance consumer trust;
- consumer-facing information to provide consumers with better, more accessible information to help them understand the key sustainability features of a product;
- detailed information targeted at institutional investors and consumers seeking more information in pre-contractual, ongoing product-level, and entity-level disclosures; and
- requirements for distributors to ensure that product-level information (including the labels) is made available to consumers.

For reference, see also FCA's announcement, which can be accessed [here](#).

## Actions against directors

### Disqualification claims against Carillion NEDs

On 13 October 2023, the Secretary of State discontinued the UK government's claim against the non-executive directors (NEDs) of Carillion plc (Carillion) following the company's collapse in January 2018. By way of background, the UK government brought a High Court claim in January 2021 against five Carillion NEDs and three Carillion executive directors (the CEO and two Finance Directors). In its claim, the government sought to obtain disqualification orders in respect of each of the directors to prevent them from acting as directors and being otherwise involved in company management for a period of time. Broadly, the case against the executive directors was based on their involvement in unjustified dividend payments and the preparation and publication of false and misleading financial statements and market announcements, which were misleading as to the reality of Carillion's financial performance, position and prospects. The claim against the NEDs was based on the argument that they owed a strict duty to know the true financial position of the company. While the executive directors gave disqualification undertakings pursuant to which they agreed not to act as directors or be otherwise involved in company management for lengths of time ranging from eight to 12.5 years, the claim against the former Carillion NEDs was abandoned by the UK government shortly before court hearings were scheduled to commence.

For further information, see the UK government's press releases published on [3 July 2023](#), [14 July 2023](#) and [4 October 2023](#).

### ClientEarth's derivative claim against directors of Shell

On 14 November 2023, the Court of Appeal, without oral hearing, refused ClientEarth's permission to appeal against the High Court's decision to dismiss a derivative claim brought by the action group against directors of Shell Plc (Shell). ClientEarth had brought the derivative claim in its capacity as a minority shareholder (holding 27 shares in Shell), alleging that Shell's directors had breached their duties, including a duty to promote the success of the company (section 172 of the Companies Act 2006 (CompaniesAct)) and a duty to exercise reasonable care, skill and diligence (section 174 of the Companies Act) in relation to Shell's energy transition strategy. The High Court dismissed ClientEarth's application for permission to continue the derivative action on the basis that ClientEarth failed to show a prima facie case for giving permission to continue its claim (noting that based on ClientEarth's submissions no independent director acting in accordance with his or her duty to promote the success of the company would seek to continue the claim). The key principles flowing from the judgment are that courts will be slow to interfere with the judgment of directors, acting in good faith, in balancing the various competing factors when determining how to best promote the success of the company for the benefit of its members as a whole. In addition, the judgment shows that claimants bringing a derivative claim will be required to establish that they are bringing the action in good faith on behalf of the company and not for some ulterior purpose. With respect to ClientEarth, the court noted that ClientEarth failed to counter the inference that its single-minded focus was the imposition of its views as to the right strategy for dealing with climate risk, rather than an interest in how to best promote the success of Shell for the benefit of its members. The full judgments can be accessed here [ClientEarth v Shell Plc \[2023\] EWHC 1137 \(Ch\)](#) (12 May 2023) and [ClientEarth v Shell Plc \[2023\] EWHC 1897 \(Ch\)](#) (24 July 2023).

# Withdrawal of corporate reporting regulations and FRC policy update

In our [client update](#) on 2 August 2023, we provided an overview of the UK government's proposals to enhance UK corporate reporting and internal controls for listed and other companies through the introduction of the [Draft Companies \(Strategic Report and Directors' Report\) \(Amendment\) Regulations 2023](#) (Regulations). The Regulations were expected to amend Part 15 of the Companies Act to introduce additional corporate reporting requirements, including an annual resilience statement, a distributable profits figure and distribution policy statement, a material fraud statement and a triennial audit and assurance policy statement, as proposed by the government in '[Restoring Trust in Audit and Corporate Governance](#)', published in May 2022. The Regulations would have applied to all UK companies (being companies incorporated under the Companies Act) with a high level of employees (750 employees or more) and a high level of turnover (an annual turnover of at least £750 million).

As we subsequently reported in our [client update](#), on 16 October 2023 the UK government announced the withdrawal of these Regulations after consultation with companies raised concerns about imposing additional reporting requirements. The government confirmed that instead of going ahead with the Regulations, it will pursue options to reduce the burden of red tape to ensure the UK is one of the best places in the world to do business. The government also confirmed that it remains committed to wider audit and corporate governance reform, including establishing a new Audit, Reporting and Governance Authority to replace the existing FRC and that it will bring forward legislation to deliver these reforms when parliamentary time allows.

In light of the UK government's policy changes, the FRC, in order to ensure alignment, has decided to take forward only a small number of the original 18 proposals that the FRC has set out in its [consultation to the proposed amendments to the Governance Code](#) (May 2023) and to stop the development of the remainder (see [Statement: FRC policy update](#), published on 7 November 2023). In its policy update, the FRC confirmed that in the interest of reducing burdens, there will be a small number of changes that streamline and reduce duplication associated with the Governance Code. The main substantive changes that the FRC will take forward are changes relating to internal controls but with more targeted and proportionate revisions. The remainder of the original proposals, including those relating to the proposed reporting requirements under the now withdrawn Regulations, the role of audit committees on environmental and social governance and modifications relating to shareholder engagement, diversity and over-boarding, will not be taken forward. The FRC confirmed that it intends to publish an updated Governance Code in January 2024 and that it also intends to give additional remit to its Stakeholder Insight Group to advise the FRC on whether there are aspects of its current and planned guidance associated with the Governance Code that could be improved with a view to ensuring that the right balance is struck between supporting effective governance and reducing unnecessary burdens. Once the updated Governance Code is issued in January 2024, the FRC will also as its next priority start to engage with stakeholders on how to best review the UK Stewardship Code, including understanding how it works in practice and what changes may be required going forward to ensure it remains fit for purpose.

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For a comprehensive overview of the UK corporate governance regime, please see our [UK chapter](#) to the 13th edition of *The Corporate Governance Review*.

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