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A Theoretical Framework for Transformative Corporate Intergenerational Equity

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Abstract: This article argues for the integration of intergenerational equity principles into UK company law to address the growing environmental challenges of the future. Drawing on these principles, it develops a theoretical framework for reconceptualising the corporate form under UK law. The article explores the justifications for this approach, including the need to promote long-term corporate success and address intergenerational equity concerns. It lays the groundwork for future research on operationalising this framework within the UK legal context. Ultimately, the article contends that the integration of intergenerational equity principles into UK company law is not only desirable but also feasible. As such, it contributes to the ongoing debate on corporate purpose, offering a fresh perspective on the role of UK company law in achieving fairness for future generations.

Keywords: intergenerational equity principles, future generations, UK company law, environmental, social, and governance

1. Introduction

Corporate law has traditionally focused on the primacy of shareholders and the maximisation of short-term profits.¹ Newer concepts and approaches have emerged, such as stakeholder theory, enlightened shareholder value, and corporate sustainability, which seek to broaden the scope of corporate responsibilities beyond the narrow pursuit of shareholder wealth maximisation.² However, despite these developments, the integration of intergenerational equity considerations into corporate law remains limited, with many companies still prioritising short-term financial performance over long-term planning.³ This article argues that the integration of intergenerational equity principles into corporate law offers a promising avenue for addressing these challenges and promoting a more forward-thinking approach to corporate governance. Intergenerational equity, a principle well-established in international environmental law, recognises the responsibilities of the present generation towards future generations and the need to preserve the planet's resources and ecosystems for their benefit.⁴ By extending this

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¹ See Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits', *The New York Times Magazine* (13 September 1970).

² Andrew Johnston and Beate Sjøfjell, 'The EU's Approach to Environmentally Sustainable Business: Can Disclosure Overcome the Failings of Shareholder Primacy?' in Marjan Peeters and Mariolina Elia Antonio (eds), *Research Handbook on EU Environmental Law* (Edward Elgar 2020) 397-399.

³ *ibid* 400.

⁴ See Edith Brown Weiss, 'In Fairness to Future Generations and Sustainable Development' (1992) 8 *American University International Law Review* 19; See Beate Sjøfjell and Christopher M Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (CUP 2019); Edith Brown Weiss, *In Fairness to Future Generations: International Law, Common Patrimony, and Intergenerational Equity* (Transnational Publishers 1989) 17-21.

principle to the corporate context, corporate law can play a crucial role in ensuring that companies operate in a manner that is equitable for both current and future generations.⁵

Corporate legal scholarship is currently divided into two main camps: the traditional shareholder-focused approach and the stakeholder approach. The shareholder-focused approach, rooted in law and economics, views corporations primarily as vehicles for maximising shareholder value.⁶ This perspective argues that the sole social responsibility of businesses is to increase profits within the rules of the game, and that any deviations from this goal would lead to inefficiencies and reduced social welfare.⁷ In contrast, the stakeholder approach contends that corporations have responsibilities beyond merely maximising shareholder wealth, and should consider the interests of a broader range of stakeholders, including employees, customers, suppliers, local communities, and the environment.⁸ This article aligns with the stakeholder perspective, arguing for the integration of intergenerational equity principles into corporate law. However, it is crucial to acknowledge and engage with the concerns raised by the traditionalist camp, particularly regarding the potential impact on agency costs,⁹ the challenges of balancing multiple stakeholder interests,¹⁰ and the practical difficulties of implementing and enforcing stakeholder-oriented corporate governance.¹¹ While acknowledging these concerns, this article favours the stakeholder approach and seeks to develop a conceptual framework for modifying existing approaches to better imbue intergenerational equity principles into corporate law.

As powerful economic actors, companies have a significant impact on the well-being of both current and future generations.¹² By prioritising short-term financial gains over long-term sustainability, companies can cause environmental degradation, social inequality, and other harms that disproportionately affect future generations.¹³ The current legal framework, where the integration of intergenerational equity considerations into corporate law remains limited, has led to a misalignment between corporate decision-making and the interests of future generations. The shareholder primacy model is often justified on the grounds that it helps mitigate the agency problem inherent in the separation of ownership and control in corporations.¹⁴ By aligning managerial incentives with shareholder interests through mechanisms such as performance-based compensation and the market for corporate control, the shareholder primacy model arguably reduces the risk of managerial opportunism and self-dealing.¹⁵ Critics argue that the stakeholder model of corporate governance, closely aligned with intergenerational equity principles, can exacerbate the agency problem by granting managers greater discretion to pursue their own interests at the expense of shareholders and other stakeholders.¹⁶ Balancing the interests of current and future stakeholders introduces complexity and potential conflicts that could provide cover for managerial rent-seeking and entrenchment.¹⁷ These concerns cannot be

⁵ See Edward B Rock, 'Adapting to the New Shareholder-Centric Reality' (2013) 161 *University of Pennsylvania Law Review* 1907, 1965; Mary Christina Wood, 'Nature's Trust: Reclaiming an Environmental Discourse' (2007) 25 *Virginia Environmental Law Journal* 243.

⁶ For a quick summary of the discussion, see Oliver Hart and Luigi Zingales, 'Companies Should Maximise Shareholder Welfare Not Market Value' (2017) 2 *Journal of Law, Finance, and Accounting* 247.

⁷ See Michael C Jensen, 'Value Maximisation, Stakeholder Theory, and the Corporate Objective Function' (2010) 22 *Journal of Applied Corporate Finance* 32.

⁸ Andrew Keay, 'Stakeholder Theory in Corporate Law: Has It Got What It Takes?' (2010) 9 *Richmond Journal of Global Law & Business* 249, 252.

⁹ Lucian A Bebchuk and others, 'The Agency Problems of Institutional Investors' (2017) 31 *Journal of Economic Perspectives* 89; Kishanthi Parella, 'Contractual Stakeholderism' (2022) 102 *Boston University Law Review* 865.

¹⁰ Michael Jensen, 'Value Maximisation, Stakeholder Theory, and the Corporate Objective Function' (2002) 7 *European Financial Management* 297.

¹¹ JW Stoelhorst and Pushpika Vishwanathan, 'Beyond Primacy: A Stakeholder Theory of Corporate Governance' (2024) 49 *Academy of Management Review* 0268.

¹² Beate Sjøfjell and others, 'Shareholder Primacy: The Main Barrier to Sustainable Companies' in Beate Sjøfjell and Benjamin J Richardson (eds), *Company Law and Sustainability: Legal Barriers and Opportunities* (CUP 2015) 79, 83-85.

¹³ Andrew Johnston, 'Climate-Related Financial Disclosures: What Next for Environmental Sustainability?' (University of Oslo Faculty of Law Research Paper No 2018-02).

¹⁴ Adolf Berle and Gardiner Means, *The Modern Corporation and Private Property* (Transaction Publishers 1932).

¹⁵ Eugene F Fama and Michael C Jensen, 'Separation of Ownership and Control' (1983) 26 *Journal of Law and Economics* 327.

¹⁶ Bebchuk and others (n 9).

¹⁷ Mark J Roe, 'Rents and Their Corporate Consequences' (2001) 53 *Stanford Law Review* 1463.

dismissed lightly, and any attempt to integrate intergenerational equity into corporate law must grapple with the challenge of ensuring managerial accountability. However, these challenges can be mitigated through careful institutional design and appropriate governance mechanisms. For example, the ‘mission purpose articulation of the reason for a corporation’s existence’ as suggested by Kershaw and Schuster¹⁸ can help ensure directors remain committed to the company’s long-term intergenerational equity goals, although the effectiveness of such provisions in constraining managerial behaviour remains debated.¹⁹ Additionally, the development of robust intergenerational equity reporting and auditing frameworks can enhance transparency and accountability, providing stakeholders with the information needed to assess performance against stated purposes.²⁰ While these measures may not fully resolve the agency problem, they can help align corporate activities with the long-term interests of society and the environment, creating value for a wider range of stakeholders.²¹ Ultimately, the goal is not to eliminate the agency problem altogether, but to ensure that the interests of future generations are adequately represented in corporate decision-making processes and that managers are held accountable for their stewardship of the company’s long-term sustainability.²²

The article proceeds as follows. Section 2 provides an overview of the limitations of traditional approaches to corporate law and governance in addressing intergenerational equity. Section 3 introduces the concept of intergenerational equity approach in the context of corporate law. Section 4 proposes a theoretical framework for integrating intergenerational equity into corporate law, focussing on three key elements: reconceptualising corporate purpose, expanding directors’ duties, and enhancing accountability mechanisms. Section 5 addresses potential challenges and opportunities, and section 6 concludes by reflecting on the implications of this framework for the future of corporate law and intergenerational equity.

2. Mapping out the existing ESG field

The debates surrounding environmental, social, and governance (ESG) considerations in corporate law have evolved significantly over the past three decades.²³ While ESG has gained prominence as a means of promoting corporate sustainability and responsibility, it has also faced criticism for its limitations and potential conflicts with traditional notions of shareholder primacy.²⁴ One of the early debates in the field centred on the concept of ‘enlightened shareholder value’ (ESV), which emerged in the UK in the late 1990s and early 2000s.²⁵ The ESV approach sought to reconcile shareholder primacy with stakeholder considerations by arguing that the long-term success of a company was ultimately in the best interests of shareholders.²⁶ This idea was reflected in the UK Company Law Review Steering Group’s 1999 report, which stated that ‘the ultimate objective of companies as currently enshrined in law—i.e. to generate maximum value for shareholders—is in principle the best means also of securing overall prosperity and welfare.’²⁷ However, the ESV approach has been criticised by some scholars for

¹⁸ David Kershaw and Edmund Schuster, ‘The Purposive Transformation of Corporate Law’ (2021) 69 *The American Journal of Comparative Law* 478, 478.

¹⁹ Paul Davies, ‘Shareholder Voice and Corporate Purpose: The Purposeless of Mandatory Corporate Purpose Statements’ (2022) ECGI Law Working Paper No. 666/2022; see response by Colin Mayer, ‘The Purpose of Corporate Purpose Statements: A Response to “Shareholder Voice and Corporate Purpose: The Purposeless of mandatory Corporate Purpose Statements” by Paul Davies’ (2023) ECGI Law Working Paper No. 694/2023.

²⁰ Robert G Eccles and others, ‘The Impact of Corporate Sustainability on Organisational Processes and Performance’ (2014) 60 *Management Science* 2835.

²¹ Beate Sjøfjell, ‘Redefining the Corporation for a Sustainable New Economy’ (2018) 45 *Journal of Law and Society* 29.

²² Colin Mayer, ‘The Future of the Corporation and the Economics of Purpose’ (2020) 58 *Journal of Management Studies* 887.

²³ For an overview of ESG issues, see Ben Chester Cheong, ‘The doctrine of corporate conscience: navigating the labyrinth of ESG litigation in the quest for sustainability and justice’ (2024) 19 *Capital Markets Law Journal* 352.

²⁴ William Wilson Bratton, ‘Shareholder Primacy versus Shareholder Accountability’ (European Corporate Governance Institute - Law Working Paper No. 716/2023).

²⁵ John Parkinson, ‘Inclusive Company Law’ in John de Lacy (ed), *The Reform of United Kingdom Company Law* (Routledge 2002) 43, 44.

²⁶ Lucian A Bebchuk and others, ‘Does Enlightened Shareholder Value Add Value?’ (ECGI Law Working Paper No 643/2022, May 2022) 3-7.

²⁷ Company Law Review Steering Group, *Modern Company Law for a Competitive Economy: The Strategic Framework* (URN 99/654, 1999) para 5.1.12.

not going far enough in promoting genuine corporate sustainability and responsibility. Keay argued that the ESV approach ‘does not take the UK far, or at all, down the path to stakeholderism’ and did not fundamentally challenge the shareholder primacy norm.²⁸ Similarly, Williams suggested that the ESV approach ‘do little more than give expression to matters of practical business sense than clarify rather than revolutionise the existing law’.²⁹

Another important debate in the field has centred on the role of ESG disclosure requirements. Several countries, including France and the UK, have previously introduced ESG reporting requirements for listed companies.³⁰ France enacted the *Nouvelles Régulations Économiques* (NRE) law in 2001, which required listed companies to disclose social and environmental impacts. The UK introduced enhanced corporate reporting requirements through the Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013, which required quoted companies to disclose information about environmental matters, employees, social and community issues, and human rights concerns in their annual strategic reports. These requirements were seen as a means of promoting greater transparency and accountability in corporate sustainability performance.³¹ However, the effectiveness of ESG disclosure requirements is debatable. Some scholars have argued that such requirements can lead to ‘greenwashing’, where companies selectively disclose positive ESG information while obscuring negative impacts.³² Others have suggested that the lack of standardisation in ESG reporting frameworks can make it difficult for investors to compare and assess corporate sustainability performance.³³ The rise of ESG investing in the 2010s has also sparked debates about the role of institutional investors in promoting corporate sustainability. ESG investing refers to the incorporation of ESG factors into investment decision-making and portfolio construction.³⁴ Proponents of ESG investing argue that it can help to promote long-term value creation and mitigate risks associated with unsustainable corporate practices.³⁵ However, critics of ESG investing have raised concerns about the potential for conflicts of interest and the lack of clarity around ESG investment criteria.³⁶ Some have argued that ESG investing may be driven more by marketing considerations than genuine sustainability concerns.³⁷ Others have suggested that the focus on ESG factors may lead investors to overlook other important considerations, such as financial performance and risk management.³⁸

The debate around ESG investing has also intersected with broader discussions about the purpose of the corporation and the role of corporate law in promoting sustainability. In the US, the Business Roundtable’s 2019 statement on the purpose of a corporation, which embraced a stakeholder-oriented approach, was seen by some as a significant shift away from shareholder primacy.³⁹ However, others have argued that the statement lacked legal force and did not fundamentally challenge the

²⁸ Andrew Keay, *The Enlightened Shareholder Value Principle and Corporate Governance* (Routledge 2013) 218.

²⁹ Richard Williams, ‘Enlightened Shareholder Value in UK Company Law’ (2012) 35 UNSW Law Journal 360, 366.

³⁰ Philipp Krueger and others, ‘The Effects of Mandatory ESG Disclosure Around the World’ (2024) 62 Journal of Accounting Research 1795, 1807-1810.

³¹ Iris H-Y Chiu, ‘Standardization in Corporate Social Responsibility Reporting and a Universalist Concept of CSR - A Path Paved with Good Intentions’ (2010) 22 Florida Journal of International Law 361, 363-364.

³² Güler Aras and David Crowther, ‘Governance and Sustainability: An Investigation into the Relationship Between Corporate Governance and Corporate Sustainability’ (2008) 46 Management Decision 433, 442-444.

³³ Carlos Noronha and others, ‘Corporate Social Responsibility Reporting in China: An Overview and Comparison with Major Trends’ (2013) 20 Corporate Social Responsibility and Environmental Management 29, 40-41.

³⁴ Benjamin J Richardson and Wes Cragg, ‘Being Virtuous and Prosperous: SRI’s Conflicting Goals’ (2010) 92 Journal of Business Ethics 21, 22.

³⁵ Emma Sjöström, ‘Shareholder Activism for Corporate Social Responsibility: What Do We Know?’ (2008) 16 Sustainable Development 141, 142.

³⁶ Lucian A. Bebchuk and Roberto Tallarita, ‘The Illusory Promise of Stakeholder Governance’ (2020) 106 Cornell Law Review 91, 101-102.

³⁷ Lorraine Talbot, ‘Polanyi’s Embeddedness and Shareholder Stewardship: A Contextual Analysis of Current Anglo-American Perspectives on Corporate Governance’ (2011) 62 Northern Ireland Legal Quarterly 451, 458.

³⁸ Bebchuk and Tallarita (n 36) 164.

³⁹ Business Roundtable, ‘Statement on the Purpose of a Corporation’ (19 August 2019) <<https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>> accessed 14 May 2024.

prevailing corporate governance model.⁴⁰ In recent years, there has been growing interest in the concept of ‘sustainable corporate governance’, which seeks to embed sustainability considerations into the very structure and purpose of the corporation.⁴¹ Proponents of sustainable corporate governance argue that it is necessary to move beyond voluntary ESG initiatives and disclosure requirements, and to create legal duties and accountability mechanisms that prioritise long-term sustainability and stakeholder interests.⁴² One example of this approach, the ‘benefit corporation’ model, has been adopted in several US states⁴³ and other jurisdictions, such as the UK.⁴⁴ The current legal framework, where the integration of intergenerational equity considerations into corporate law remains limited, has led to a misalignment between corporate decision-making and the interests of future generations.⁴⁵ Benefit corporations are required to pursue a public benefit purpose, such as environmental sustainability or social responsibility, in addition to shareholder value.⁴⁶ They are also subject to heightened transparency and accountability requirements, including regular reporting on their sustainability performance.⁴⁷ Another example, the ‘stewardship code’ model, which has been adopted in several countries, including the UK and Japan.⁴⁸ Stewardship codes seek to promote active and responsible investment by institutional investors, with a focus on long-term value creation and ESG considerations.⁴⁹ However, the effectiveness of stewardship codes in promoting genuine corporate sustainability has been debated, with some arguing that they lack legal enforceability and rely too heavily on voluntary compliance.⁵⁰

The COVID-19 pandemic has also brought renewed attention to the importance of intergenerational equity and responsibility. The pandemic has highlighted the interconnectedness of social, environmental, and economic systems, and the need for companies to prioritise the interests of a broad range of stakeholders.⁵¹ It has also exposed the vulnerabilities of global supply chains and the risks associated with short-term thinking and shareholder-centric business models.⁵² In this context, there have been calls for a ‘green recovery’ from the pandemic, with a focus on building more sustainable and resilient economies.⁵³ Some have argued that the pandemic presents an opportunity to ‘build back better’ and to create a new corporate governance model that prioritises long-term sustainability and stakeholder interests.⁵⁴ However, the path forward remains uncertain and contested. While there is growing recognition of the need for a more sustainable and responsible corporate sector, there are also significant challenges and obstacles to overcome. These include the entrenched power of shareholder-centric business models, the lack of standardisation and comparability in ESG reporting,

⁴⁰ Stephen Bainbridge, ‘Making Sense of the Business Roundtable’s Reversal on Corporate Purpose’ (2021) 46 *The Journal of Corporation Law* 285, 286.

⁴¹ Sjäffell and Bruner (n 4) 4-7.

⁴² Christopher M Bruner, ‘Corporate Governance Reform and the Sustainability Imperative’ (2022) 131 *Yale Law Journal* 1062, 1250-1253.

⁴³ Frederick Alexander, *Benefit Corporation Law and Governance: Pursuing Profit with Purpose* (Berrett-Koehler Publishers 2018) 60-64.

⁴⁴ Stelios Andreadakis, ‘Social Enterprises, Benefit Corporations and Community Interest Companies: The UK Landscape’ in Henry Peter and others (eds), *The International Handbook of Social Enterprise Law* (Springer 2023) 888-896.

⁴⁵ This article focuses primarily on the corporate law framework in the United Kingdom, with some references to developments in other common law jurisdictions such as the United States and Canada. However, the principles and arguments discussed here have broader relevance for the integration of intergenerational equity into corporate law and governance across different legal systems.

⁴⁶ Janine S Hiller, ‘The Benefit Corporation and Corporate Social Responsibility’ (2013) 118 *Journal of Business Ethics* 287, 290-291.

⁴⁷ Joan MacLeod Heminway, ‘Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations’ (2017) 40 *Seattle University Law Review* 611, 643-645.

⁴⁸ Dionysia Katelouzou and Mathias Siems, ‘The Global Diffusion of Stewardship Codes’ in Dionysia Katelouzou and Dan W Puchniak (eds), *Global Shareholder Stewardship: Complexities, Challenges and Possibilities* (CUP 2022) 633-634.

⁴⁹ Arad Reisberg, ‘The UK Stewardship Code: On the Road to Nowhere?’ (2015) 15 *Journal of Corporate Law Studies* 217, 220-221.

⁵⁰ Bobby V Reddy, ‘The Emperor’s New Code? Time to Re-Evaluate the Nature of Stewardship’ (2021) 84 *MLR* 842, 872.

⁵¹ Klaus Schwab and Thierry Malleret, *COVID-19: The Great Reset* (Forum Publishing 2020).

⁵² Susan Lund and others, ‘Risk, resilience, and rebranding in global value chains’ (McKinsey Global Institute, August 2020)

⁵³ World Economic Forum, ‘The Great Reset’ (2021), available at: <<https://www.weforum.org/videos/series/the-great-reset-863c8ea2d4/>> accessed 14 May 2024.

⁵⁴ David Dowling, ‘The Role of the Company in the Time of Covid-19’ (2021) 32 *King’s Law Journal* 37, 45.

and the potential for conflicts between different stakeholder interests.⁵⁵ Moreover, the debate around corporate intergenerational equity and responsibility is not limited to the realm of corporate law and governance. It intersects with broader questions of public policy, international trade, and global governance.⁵⁶ Addressing the challenges of intergenerational equity will require a coordinated and multi-faceted approach that engages a wide range of actors and institutions.⁵⁷

3. Shift from Current ESG approach to Intergenerational Equity

The integration of intergenerational equity into UK company law requires a fundamental shift from the current ESG approach that seek to influence corporate behaviour to one that relook fundamentally at creating a dominant corporate form that prioritise intergenerational equity. While these existing approaches have made important contributions to promoting sustainability and social responsibility, they differ from the proposed intergenerational equity framework in several key respects.

A. Theoretical foundations

The integration of intergenerational equity principles into corporate law is justifiable through three distinct arguments. Firstly, the urgent challenges of sustainability and climate change necessitate a fundamental reorientation of corporate law towards intergenerational equity. As Stout argues, ‘while members of the present generation can use corporate entities to preserve and invest resources to benefit future generations, this does not mean they will’.⁵⁸ The failure of corporate law to adequately address these challenges has contributed to the growing environmental and social crises we face, from climate change to biodiversity loss.⁵⁹ Empirical studies have shown that corporate activities are responsible for a significant share of global greenhouse gas emissions and environmental degradation.⁶⁰ Therefore, corporate law has a crucial role to play in promoting equitable practices and ensuring that companies operate within planetary boundaries.

Secondly, the integration of intergenerational equity principles into corporate law has the potential to promote long-term value creation and corporate resilience. Empirical evidence supports this view, with studies showing that companies that prioritise sustainability and stakeholder engagement tend to outperform their peers in the long run.⁶¹ For example, a study by Eccles, Ioannou, and Serafeim found that companies with a strong commitment to sustainability and stakeholder engagement had higher stock market and accounting performance over an 18-year period compared to their less sustainable counterparts.⁶² Moreover, the consideration of long-term sustainability risks and opportunities can enhance corporate resilience and adaptability in the face of economic, social, and environmental challenges.⁶³

Thirdly, corporate law has a significant role in shaping corporate culture and behaviour, and the integration of intergenerational equity principles can help to promote a more responsible and equitable corporate ethos. As Millon argues, ‘radical shareholder primacy in the law schools is probably

⁵⁵ Carsten Gerner-Beuerle and Edmund-Philipp Schuster, ‘The Evolving Structure of Directors’ Duties in Europe’ (2014) 15 *European Business Organization Law Review* 191, 193-196, 226.

⁵⁶ Larry Catá Backer, ‘Private Actors and Public Governance Beyond the State: The Multinational Corporation, the Financial Stability Board, and the Global Governance Order’ (2011) 18 *Indiana Journal of Global Legal Studies* 751, 776-777.

⁵⁷ John G Ruggie, ‘Multinationals as Global Institution: Power, Authority and Relative Autonomy’ (2018) 12 *Regulation & Governance* 317, 327-329.

⁵⁸ Lynn A Stout, ‘The Corporation as Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form’ (2015) 38 *Seattle University Law Review* 685, 698.

⁵⁹ Beate Sjøfjell and Mark B Taylor, ‘A Clash of Norms: Shareholder Primacy vs. Sustainable Corporate Purpose’ (2019) 13 *International and Comparative Corporate Law Journal* 40.

⁶⁰ Sarah Light, ‘The Law of the Corporation as Environmental Law’ (2019) 71 *Stanford Law Review* 137, 147-148; Tess Riley, ‘Just 100 companies responsible for 71% of global emissions, study says’, *The Guardian* (10 July 2017).

⁶¹ Gunnar Friede and others, ‘ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies’ (2015) 5 *Journal of Sustainable Finance & Investment* 210, 226-227.

⁶² Eccles and others (n 20) 2853.

⁶³ Johnston and Sjøfjell (n 2) 405.

part of a larger ideological, economic, and socio-political phenomenon that now shapes and legitimises business practices in powerful ways'.⁶⁴ Instead, by explicitly recognising the importance of intergenerational equity, corporate law can send a clear signal to companies about the need to consider the long-term impacts of their actions and to operate in a more responsible and equitable manner. This, in turn, can influence corporate decision-making, risk management, and stakeholder engagement practices, leading to more equitable outcomes.⁶⁵

However, it is important to acknowledge dissenting views on the integration of intergenerational equity into corporate law. Some scholars, such as Bebchuk, argue that the primary purpose of corporate law should remain focused on shareholder wealth maximisation and that the consideration of other stakeholder interests, including those of future generations, could lead to managerial entrenchment and reduced accountability.⁶⁶ Others, such as Hansmann and Kraakman, contend that the stakeholder model of corporate governance, which is most closely aligned with intergenerational equity principles, can lead to inefficiencies and reduced competitiveness compared to the shareholder primacy model.⁶⁷ These concerns can be reconciled by recognising that the integration of intergenerational equity into corporate law need not entail a complete rejection of shareholder interests or a disregard for economic efficiency. Instead, it requires a balancing of short-term and long-term considerations, and a recognition that the long-term success of companies is inherently tied to the well-being of society and the environment. As Sjäffjell argues, 'the social norm of shareholder primacy is so strongly entrenched that it has taken on the life of a legal myth, undermining corporate law. This arguably calls for a reform of corporate law, to take back the power of defining what the purpose of corporations is'.⁶⁸ Case law from common law jurisdictions could be extended to support the integration of intergenerational equity principles into corporate law. In the Canadian case of *BCE Inc v 1976 Debentureholders*, the Supreme Court of Canada held that while directors owe their fiduciary duty to the corporation alone, they may consider the interests of various stakeholders when determining what is in the corporation's best interests.⁶⁹ Similarly, in the case of *Vedanta Resources PLC v Lungowe*, the UK Supreme Court clarified that while parent-subsidiary relationships do not automatically create duties of care, parent companies may owe a duty of care to those affected by their subsidiaries' activities where they have sufficiently intervened in the subsidiary's operations or management of risks.⁷⁰ These cases demonstrate a growing recognition of factoring in sustainability and stakeholder interests in corporate decision-making.

B. Legal enforceability

One of the primary differences between the intergenerational equity approach and existing ESG approach is the level of legal enforceability. Many ESG initiatives, such as voluntary corporate sustainability reporting and socially responsible investing, rely on market pressures and reputational incentives to influence corporate behaviour.⁷¹ The legal enforceability of ESG approaches in UK company law is currently limited, relying primarily on voluntary initiatives and soft law approaches. The UK Corporate Governance Code 2018, to be replaced with the UK Corporate Governance Code 2024 from 1 January 2025,⁷² encourages companies to consider and report on their environmental and social impacts but functions on a 'comply or explain' principle, allowing companies to deviate from its

⁶⁴ David Millon, 'Radical Shareholder Primacy' (2013) 10 University of St. Thomas Law Journal 1013, 1042.

⁶⁵ Charlotte Villiers, 'Global Supply Chains and Sustainability: The Role of Disclosure and Due Diligence Laws' in Beate Sjäffjell and Christopher M Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (CUP 2020) 551-552.

⁶⁶ Lucian A Bebchuk, 'The Case for Increasing Shareholder Power' (2005) 118(3) Harvard Law Review 833, 850

⁶⁷ Henry Hansmann and Reinier Kraakman, 'The End of History for Corporate Law' (2001) 89 Georgetown Law Journal 439, 447-449.

⁶⁸ Sjäffjell (n 21) 41.

⁶⁹ *BCE Inc v 1976 Debentureholders* [2008] 3 SCR 560 at [39].

⁷⁰ *Vedanta Resources PLC v Lungowe* [2019] UKSC 20 (*Vedanta*) at [49]-[52]; see also Ben Chester Cheong, 'Bridging the Accountability Gap by Enhancing UK Corporate and Personal Liability for Environmental Harms' (2024) 45 Company Lawyer 363, 370-371.

⁷¹ Barnali Choudhury, 'Social Disclosure' (2016) 13 Berkeley Business Law Journal 185, 186-189.

⁷² Financial Reporting Council, 'UK Corporate Governance Code' (22 January 2024).

rules if they provide a reasonable justification.⁷³ This flexibility promotes adaptability to diverse corporate environments but also leads to inconsistent compliance and varied interpretations. Some companies might provide vague explanations, which undermines the Code's effectiveness.⁷⁴ There are no direct legal consequences for non-compliance. On 29 July 2024, new UK Listing Rules came into force. The previous premium and standard listing segments are now replaced with a new single listing category for commercial companies, known as the Equity Shares (Commercial Companies) Category ('ESCC').⁷⁵ Although the Code now targets ESCC on the London Stock Exchange, enforcement still depends on market reputation and shareholder influence rather than legal action, weakening its ability to influence corporate behaviour significantly.⁷⁶ The Code does not apply to private companies. Although large private firms must disclose their governance practices under The Companies (Miscellaneous Reporting) Regulations 2018, the Code's principles are not mandatory for them, reducing its impact on a major part of the corporate sector.⁷⁷ The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, for example, require large and medium sized quoted companies to report on their environmental and social impacts, but as noted by Hamed et al, there are no specific penalties or enforcement mechanisms for companies that fail to comply or provide inadequate disclosures.⁷⁸ Additionally, the Code's scope is limited to companies listed in the ESCC category, excluding those listed elsewhere, which restricts its broader influence on corporate governance practices.⁷⁹ Cheffins and Reddy have called for the Code to be abolished.⁸⁰ While these provisions do not explicitly address intergenerational equity, they reflect a growing recognition of the importance of sustainability and stakeholder considerations in corporate governance. Future research should consider the potential impact of these regulatory changes on the integration of intergenerational equity principles into corporate law and practice.

Similarly, the UK Stewardship Code 2020 sets out principles for institutional investors to engage with and monitor the companies they invest in, including on ESG issues but remains voluntary for institutional investors and asset managers,⁸¹ encouraging responsible stewardship practices without imposing mandatory requirements. Consequently, some signatories may not fully adhere to its principles, choosing to apply them selectively for convenience.⁸² The Code lacks enforceable mechanisms to ensure signatories' accountability; while they commit to reporting their stewardship activities, there are no legal repercussions for inadequate compliance, which diminishes the Code's effectiveness in fostering active engagement and responsible ownership.⁸³ Despite emphasising transparent reporting, the quality of disclosures among signatories varies significantly. Some reports are non-specific, fail to address key issues, or lack evidence of substantial engagement.⁸⁴ The absence of standardised reporting requirements impedes the comparability and assessment of stewardship practices.⁸⁵ Additionally, the Code primarily targets institutional investors and asset managers, excluding other stakeholders such as retail investors, pension funds, and private equity firms.⁸⁶ This

⁷³ Financial Reporting Council, 'The UK Corporate Governance Code' (July 2018) 4.

⁷⁴ Marc T Moore, "'Whispering Sweet Nothings': The Limitations of Informal Conformance in UK Corporate Governance" (2009) 9 *Journal of Corporate Law Studies* 95, 126-127.

⁷⁵ Financial Conduct Authority, 'FCA overhauls listing rules to boost growth and innovation on UK stock markets' (11 July 2024).

⁷⁶ Andrew Keay, 'Comply or Explain in Corporate Governance Codes: In Need of Greater Regulatory Oversight?' (2014) 34 *Legal Studies* 279, 294-295.

⁷⁷ UK Corporate Governance Code (n 72); Companies (Miscellaneous Reporting) Regulations 2018, SI 2018/860.

⁷⁸ The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013, SI 2013/1970, reg 7; Ruba Subhi Hamed and others, 'The impact of introducing new regulations on the quality of CSR reporting: Evidence from the UK' (2022) 46 *Journal of International Accounting, Auditing and Taxation* 100444, at 3.

⁷⁹ The UK Corporate Governance Code (n 73).

⁸⁰ Brian R Cheffins and Bobby V Reddy, 'Thirty years and done – time to abolish the UK Corporate Governance Code' (2022) 22 *Journal of Corporate Law Studies* 709, 748.

⁸¹ Financial Reporting Council, 'The UK Stewardship Code 2020' (October 2019) 4.

⁸² Reddy (n 50) 871-873.

⁸³ *ibid*; see also Reisberg (n 49); Brian R Cheffins, 'The Stewardship Code's Achilles' Heel' (2010) 73 *MLR* 1004.

⁸⁴ *ibid*.

⁸⁵ *ibid*.

⁸⁶ Reddy (n 50) 845.

narrow focus limits the Code's ability to address the broader stewardship ecosystem and its influence on corporate behaviour.⁸⁷

In contrast, the intergenerational equity approach seeks to embed consideration of future generations and long-term sustainability into the core legal duties and obligations of companies and their directors.⁸⁸ By amending key provisions of the Companies Act 2006, such as section 172 on the duty to promote the success of the company, the intergenerational equity framework is seeking to create legally binding requirements for companies to consider and prioritise the interests of future generations. In *Vedanta Resources Plc v Lungowe*, the UK Supreme Court held that Zambian villagers could pursue claims against both a UK parent company and its Zambian subsidiary in English courts for alleged toxic emissions from the Nchanga Copper Mine in Zambia.⁸⁹ While the case only determined jurisdictional issues rather than substantive liability, it demonstrated that parent companies may face legal proceedings in their home jurisdictions for alleged overseas environmental harms where there are serious concerns about access to justice in the local courts.⁹⁰ While the case was not decided on intergenerational equity grounds, it demonstrates the potential for legally enforceable duties and obligations to hold companies accountable for their social and environmental impacts.

Although *Vedanta* was decided on jurisdictional grounds, the court's analysis of whether there was a triable issue clarified that parent company liability is not a special category of tort law. Rather, whether a parent company owes a duty of care depends on ordinary tort law principles, with liability potentially arising where the parent has sufficiently intervened in the subsidiary's operations or management of risks.⁹¹ Nevertheless, it is arguable that the existence of other legal remedies, such as tort law and regulation, does not necessarily obviate the need for reform of fiduciary obligations. The integration of intergenerational equity principles into corporate law can complement and reinforce these external accountability mechanisms, promoting a more holistic and proactive approach to corporate sustainability and responsibility. By embedding intergenerational equity considerations into the core duties and decision-making processes of corporate directors, the proposed framework aims to prevent environmental and social harms from occurring in the first place, rather than merely providing remedies after the fact.⁹²

The UK Supreme Court's ruling in *R (on the application of Friends of the Earth Ltd) v Heathrow Airport Ltd*,⁹³ while focused on planning law rather than company law, demonstrates the complex interaction between environmental obligations and legal frameworks. The Court overturned the Court of Appeal's decision, finding that the Government had not acted unlawfully in its treatment of the Paris Agreement when developing the Airports National Policy Statement (ANPS). Importantly, the court found that at the time of the ANPS designation in 2018, the Government's approach to the Paris Agreement targets was still in development, and that the ANPS framework ensured future development consent would have to comply with whatever emissions obligations were in force at that time.⁹⁴ This case illustrates how courts approach the enforcement of environmental obligations within existing statutory frameworks, while recognising that policy responses to international environmental commitments may evolve over time.

While ESG considerations have gained traction in recent years, they remain largely voluntary and subject to the discretion of individual companies and government agencies. In contrast, an approach focused on intergenerational equity – the idea that current generations have a moral and legal obligation

⁸⁷ Reisberg (n 49) 225-227.

⁸⁸ Johnston and Sjärfjell (n 2) 405-407.

⁸⁹ *Vedanta* (n 70) [44]-[61].

⁹⁰ *ibid* [88]-[101].

⁹¹ *ibid* [53]-[61].

⁹² See e.g. Jingchen Zhao, 'Promoting More Socially Responsible Corporations through a Corporate Law Regulatory Framework' (2017) 37 *Legal Studies* 103, 135-136.

⁹³ *R (on the application of Friends of the Earth Ltd and others) (Respondents) v Heathrow Airport Ltd (Appellant)* [2020] UKSC 52.

⁹⁴ *ibid* [10], [97]-[98].

to protect the environment for future generations – could provide a more robust framework for holding decision-makers accountable. A ‘future generations commissioner’ or ombudsperson office, for example, would have the authority to represent the interests of future generations in legal proceedings and hold companies accountable for breaches of their intergenerational obligations.⁹⁵ The intergenerational equity approach seeks to build on these precedents by recommending a legal framework for corporate sustainability and responsibility. By making consideration of future generations and long-term sustainability a core legal duty of companies and directors, and by providing legal remedies and enforcement mechanisms, the intergenerational equity approach has the potential to drive more meaningful and lasting change in corporate behaviour than voluntary ESG approaches alone.

C. Scope and time horizon

Another key difference between the intergenerational equity approach and existing ESG and green mechanisms is the scope and time horizon of the considerations they encompass. ESG and green initiatives often focus on specific environmental or social issues, such as reducing greenhouse gas emissions or improving labour standards and tend to prioritise near-term impacts and outcomes.⁹⁶ For example, the Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 require quoted companies to report on their greenhouse gas emissions, but do not address other environmental impacts or long-term sustainability issues.⁹⁷ Similarly, the UK Stewardship Code 2020 encourages institutional investors to engage with companies on ESG issues. However, the Code’s emphasis is not solely on short-term financial performance; it also stresses the importance of ‘long-term value’ creation.⁹⁸ Nonetheless, it does not explicitly prioritise intergenerational equity.

The intergenerational equity approach, on the other hand, takes a more holistic and long-term view of the interests of future generations and social responsibility. It requires companies and directors to consider the broad, intergenerational consequences of their actions and decisions, taking into account the potential impacts on future generations and the long-term health of society and the planet.⁹⁹ This approach recognises that the actions and decisions of companies today can have far-reaching and lasting consequences for future generations and seeks to ensure that these consequences are fully considered and accounted for in corporate decision-making. By expanding the scope and time horizon of corporate sustainability beyond short-term financial performance and specific ESG issues, the intergenerational equity approach aims to promote a more comprehensive and forward-looking vision of corporate responsibility.¹⁰⁰

The intergenerational equity approach faces the difficult task of balancing the interests of current and future stakeholders. This challenge is not unique to the corporate context, as policymakers and society as a whole grapple with the trade-offs between short-term and long-term considerations in areas such as climate change, public debt, and pension systems.¹⁰¹ In the corporate sphere, decisions made to safeguard the interests of future generations, such as investing in clean technologies or phasing out unsustainable business practices, may come at the cost of short-term financial performance, job losses, or reduced access to affordable goods and services.¹⁰² Navigating these trade-offs requires a nuanced approach that recognises the legitimate interests of current stakeholders while also giving due weight to the rights and needs of future generations. One way to approach this challenge is through the lens of

⁹⁵ Maja Göpel, ‘Guarding Our Future: How to Protect Future Generations’, *Solutions* (22 February 2016).

⁹⁶ Ioannis Ioannou and George Serafeim, ‘The Consequences of Mandatory Corporate Sustainability Reporting’ (Harvard Business School, Working Paper, No 11-100, May 2017) 7.

⁹⁷ The Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 (n 78) reg 7; Hamed and others (n 78) 3.

⁹⁸ The UK Stewardship Code 2020 (n 81) 4.

⁹⁹ Beate Sjåffjell, ‘Reforming EU Company Law to Secure the Future of European Business’ (2021) 18 *European Company and Financial Law Review* 190, 213.

¹⁰⁰ Lydia Slobodian, ‘Defending the Future: Intergenerational Equity in Climate Litigation’ (2020) 32 *Georgetown Environmental Law Review* 569, 580-581.

¹⁰¹ Iñigo González-Ricoy and Axel Gosseries (eds), *Institutions for Future Generations* (OUP 2016) ch 23.

¹⁰² Paul Ekins and Dimitri Zenghelis, ‘The costs and benefits of environmental sustainability’ (2021) 16 *Sustainability Science* 949, 954-955.

‘sustainable value creation’ as discussed by Ziolo and others,¹⁰³ which seeks to identify win-win solutions that generate long-term value for multiple stakeholders.¹⁰⁴ This may involve investing in eco-efficiency measures that reduce costs and environmental impacts, developing new products and services that meet the needs of underserved communities, or engaging in collaborative partnerships to address systemic challenges.¹⁰⁵ Another important consideration is the distribution of costs and benefits across different stakeholder groups and over time. The intergenerational equity approach calls for a fair and equitable sharing of the burdens and rewards of corporate activities, considering the differential impacts on present and future generations.¹⁰⁶ This may require the development of new accounting and valuation methods that better capture the long-term social and environmental costs and benefits of corporate decisions,¹⁰⁷ as well as the use of participatory and deliberative processes to include the voices of marginalised and future stakeholders in corporate governance.¹⁰⁸ While there is no easy solution to the challenge of balancing current and future interests, the intergenerational equity approach provides a framework for grappling with these trade-offs, while attempting to do so in a principled and transparent manner, guided by the overarching goal of preserving and enhancing the well-being of both present and future generations.

The importance of a long-term, intergenerational perspective in corporate decision-making can be seen in the growing threat of climate change and other environmental crises. The case of *ClientEarth v Shell plc*¹⁰⁹ illustrates the potential for short-term thinking to undermine corporate sustainability and intergenerational equity. In this case, environmental activists sought to challenge Shell’s climate strategy, arguing that it was inadequate to meet the goals of the Paris Agreement and failed to consider the long-term risks and impacts of climate change. While the court ultimately dismissed the claim on procedural grounds, the case highlights the importance of a long-term, science-based approach to corporate climate action, and the potential for short-term financial considerations to undermine intergenerational equity.¹¹⁰

The judgment confirms that directors have two key relevant duties under the Companies Act 2006. The first is the section 172 duty to promote company success, which requires considering ‘the impact of the company’s operations on the community and environment’.¹¹¹ The second is the section 174 duty to ‘exercise reasonable care, skill and diligence’.¹¹² Importantly, the court emphasised that the test for breach of section 172 is subjective and requires proof of conduct other than in good faith. As Trower J stated, ‘an honest but unreasonable and mistaken belief that a particular course of action is in the company’s best interests is not sufficient to amount to a breach of s 172’.¹¹³ The court articulated several key principles for evaluating corporate climate strategies. Directors have discretion to weigh competing considerations, with climate being one factor among many.¹¹⁴ Courts will only intervene if decisions fall ‘outside the range of decisions reasonably available to the Directors at the time’.¹¹⁵ The law ‘respects the autonomy of the decision making of the Directors on commercial issues and their judgments as to

¹⁰³ Magdalena Ziolo and others, ‘Theoretical framework of sustainable value creation by companies. What do we know so far?’ (2023) 30 Corporate Social Responsibility and Environmental Management 2344, 2345-2346; Stuart L Hart and Mark B Milstein, ‘Creating sustainable value’ (2003) 17 Academy of Management Perspectives 10025194; see also Andrea Cardoni and others, ‘In Search of Sustainable Value: A Structured Literature Review’ (2020) 12 Sustainability 615.

¹⁰⁴ Katja Rost and Thomas Ehrmann, ‘Reporting Biases in Empirical Management Research: The Example of Win-Win Corporate Social Responsibility’ (2015) 56 Business & Society 840, 841-844.

¹⁰⁵ Michael E Porter and Mark R Kramer, ‘Creating Shared Value’ Harvard Business Review (January-February 2011).

¹⁰⁶ Otto Spijkers, ‘Intergenerational Equity and the Sustainable Development Goals’ (2018) 10 Sustainability 3836, 3-4.

¹⁰⁷ Peter Letmathe and Roger K Doost, ‘Environmental cost accounting and auditing’ (2000) 15 Managerial Auditing Journal 424

¹⁰⁸ Johanna Kujala and others, ‘Stakeholder Engagement: Past, Present, and Future’ (2022) 61 Business & Society 1136.

¹⁰⁹ *ClientEarth v Shell plc* [2023] EWHC 1897 (Ch) (*ClientEarth*).

¹¹⁰ See also Lisa Benjamin, ‘The Road to Paris Runs Through Delaware: Climate Litigation and Directors’ Duties’ (2020) 13 Utah Law Review 313, 331-332, 350.

¹¹¹ *ClientEarth* (n 109) [20].

¹¹² *ibid*.

¹¹³ *ibid* [29].

¹¹⁴ *ibid* [66]-[67]

¹¹⁵ *ibid* [32]

how best to achieve results'.¹¹⁶ The judgment sets a high bar for challenging corporate climate strategies. Expert evidence is required to demonstrate directors' decisions fall outside reasonable range.¹¹⁷ Courts need 'properly admissible expert evidence' to evaluate climate risk management.¹¹⁸

In his commentary on the *ClientEarth v Shell* decision, Lord Carnwath expressed surprise at the High Court's summary dismissal of ClientEarth's case at the preliminary stage. He found the judge's reasons 'unpersuasive on all these points' and thought it was a 'missed opportunity' for the courts to examine how the relevant provisions of the Companies Act 2006 could apply to the 'fiduciary and due care obligations' of companies in relation to climate change.¹¹⁹ In his view, ClientEarth's case was that 'the directors had failed that test' by not putting in place 'policies reasonably capable of achieving' Shell's stated energy transition strategy.¹²⁰ Lord Carnwath felt the judgment failed 'entirely to address that point' and it was 'not even apparent from the judgment what, if any, policies were relied upon by Shell in its own submission'.¹²¹ This critique underscores the importance of courts being willing to meaningfully scrutinise whether companies' climate policies and targets align with their stated strategies and legal duties. Enabling such judicial oversight is a key aim of the accountability mechanisms proposed in the intergenerational equity framework outlined in this article.

The *ClientEarth v Shell* judgment cites several key cases that are relevant for analysing how UK courts approach intergenerational equity in the corporate law context. The court's reliance on *Re Smith & Fawcett Limited*¹²² and *Howard Smith Ltd v Ampol Ltd*¹²³ emphasises the foundational principle that courts will defer to directors' judgment in determining the company's best interests, including how to balance present and future considerations.¹²⁴ This high degree of deference is reinforced by *Sharp v Blank*,¹²⁵ which limits judicial intervention to decisions falling outside the range of reasonable options available to directors.¹²⁶ The subjective, good faith-focused test for breach of directors' duties established in *Regentcrest Plc v Cohen*¹²⁷ sets a high bar for challenging directors' decisions as irrational or unreasonable, even if they fail to adequately account for long-term impacts.¹²⁸ The case law on mandatory injunctions, such as *Cooperative Insurance Society Ltd v Argyll Stores (Holdings) Ltd*,¹²⁹ highlights the practical difficulties courts face in crafting and enforcing remedies that require ongoing supervision, which is particularly relevant for climate-related orders seeking to protect future generations.¹³⁰ *Iesini v Westrip Holdings Limited*¹³¹ provides the procedural framework for derivative claims, requiring courts to assess whether there is a prima facie case that the company has a good cause of action arising from a breach of directors' duties.¹³² While this allows for consideration of long-term impacts, the other cases demonstrate the significant hurdles claimants face in challenging directors' discretion. Ultimately, the case law reveals an important tension between the need for robust judicial oversight to protect future generations' interests and the courts' reluctance to interfere with directors' good faith balancing of competing considerations. This suggests that while derivative claims are an important tool, legislative reform may be needed to more effectively embed intergenerational equity

¹¹⁶ *ibid* [64]

¹¹⁷ *ibid* [62]

¹¹⁸ *ibid*

¹¹⁹ Robert Carnwath, 'ClientEarth v Shell: What future for derivative claims?' (Grantham Research Institute on Climate Change and the Environment 2024) 5-6.

¹²⁰ *ibid* 3

¹²¹ *ibid* 5

¹²² *Re Smith & Fawcett Limited* [1942] Ch 304, 306.

¹²³ *Howard Smith Ltd v Ampol Ltd* [1974] AC 821 832E/F.

¹²⁴ *ClientEarth* (n 109) [28], [30].

¹²⁵ *Sharp v Blank* [2019] EWHC 3096 (Ch) [631].

¹²⁶ *ClientEarth* (n 109) [32].

¹²⁷ *Regentcrest Plc v Cohen* [2001] 2 BCLC 80 [120].

¹²⁸ *ClientEarth* (n 109) [29].

¹²⁹ *Cooperative Insurance Society Ltd v Argyll Stores (Holdings) Ltd* [1998] 1 AC 1 at 12G-H.

¹³⁰ *ClientEarth* (n 109) [80].

¹³¹ *Iesini v Westrip Holdings Limited* [2010] BCC 420 [78].

¹³² *ClientEarth* (n 109) [11].

principles into UK corporate law and provide clearer guidance for directors navigating these complex trade-offs.

D. Stakeholder prioritisation

ESG and green mechanisms often seek to balance the interests of various stakeholders, including shareholders, employees, customers, and local communities. However, these approaches tend to prioritise the interests of current stakeholders over those of future generations, who are not yet present to advocate for their needs and rights.¹³³ The UK Corporate Governance Code 2018, for example, emphasises the importance of considering and engaging with stakeholders, including employees, customers, suppliers, and communities, but it does not specifically mention future generations or prioritise their interests over short-term shareholder value.¹³⁴ Similarly, the UK Stewardship Code 2020 encourages institutional investors to consider and engage with companies on a range of stakeholder issues, including environmental and social impacts, but it does not explicitly prioritise the interests of future generations or require investors to hold companies accountable for their long-term sustainability performance.¹³⁵ The principles focus on how investors should act in the best interests of their clients and beneficiaries but leave the specifics of engagement to the discretion of the investors. The intergenerational equity approach, in contrast, seek to prioritise the interests of future generations over short-term stakeholder interests.¹³⁶ This approach challenges the traditional shareholder primacy model of corporate governance, which prioritises the interests of shareholders over all other stakeholders, and instead seeks to balance the needs and rights of current and future generations in the pursuit of long-term corporate sustainability.

The challenges in prioritising the interests of future generations in corporate decision-making can be seen in corporate investment policies. The case of *R (People & Planet) v HM Treasury*¹³⁷ involved a challenge to HM Treasury's policy regarding its investment in RBS through UK Financial Investments Ltd (UKFI). The claimants argued that Treasury should adopt a more interventionist approach requiring RBS to change its lending practices to avoid supporting ventures harmful to the environment or insufficiently respectful of human rights.¹³⁸ The court rejected the claim, finding that Treasury had properly considered environmental factors in its Green Book assessment while adopting a commercial approach that recognised directors' duties under section 172 of the Companies Act 2006.¹³⁹ This underscores the tension between traditional shareholder-centric fiduciary duties and broader considerations of environmental and human rights issues.¹⁴⁰

Having established the theoretical foundations for integrating intergenerational equity into UK company law in Section 3, this article now turns to proposing a concrete framework for putting these principles into practice. Section 4 outlines three key elements that form the pillars of this framework: reconceptualising the purpose of the company, expanding directors' duties, and enhancing accountability mechanisms. Each of these elements seeks to embed intergenerational equity considerations into the core of UK corporate law and governance.

4. The Theoretical Framework

A framework for integrating intergenerational equity into UK company law that consists of three key elements: (1) reconceptualising the purpose of the company, (2) expanding directors' duties, and (3)

¹³³ Aoife Nolan, 'Children and Future Generations Rights before the Courts: The Vexed Question of Definitions' (2024 advance access) TEL 1, 3.

¹³⁴ The UK Corporate Governance Code (n 73) 1.

¹³⁵ The UK Stewardship Code 2020 (n 81) 11, 27.

¹³⁶ Slobodian (n 100) 580-581.

¹³⁷ *R (on the application of People & Planet) v HM Treasury* [2009] EWHC 3020 (Admin) (*HM Treasury*).

¹³⁸ *ibid* [5].

¹³⁹ *ibid* [34]-[35].

¹⁴⁰ Dionysia Katelouzou, 'The Unseen "Others": A Framework for Investor Stewardship' (2024) 77 *Current Legal Problems* 295, 299.

enhancing accountability mechanisms. Each of these elements is discussed in turn below and summarised in **Table 1**.

Element	Current Approach	Intergenerational Equity Approach
Corporate Purpose	Shareholder primacy: maximising short-term financial returns for shareholders (s 172 Companies Act 2006)	Stakeholder governance: balancing the interests of current and future generations, as well as other stakeholders
Directors' Duties	Narrow focus on shareholders' financial interests (s 172 Companies Act 2006)	Expanded duties to consider the long-term impacts of corporate actions on future generations and other stakeholders
Accountability Mechanisms	Limited liability and shareholder derivative claims (Part 11 Companies Act 2006)	Expanded standing for future generations and other stakeholders to bring claims; increased transparency and reporting requirements

Table 1: Integrating Intergenerational Equity into UK Company Law

A. Reconceptualising the Purpose of the Company

The first element of the framework involves reconceptualising the purpose of the company. Under the traditional shareholder primacy model, enshrined in s 172 of the Companies Act 2006, the primary purpose of the company is to promote the success of the company for the benefit of its members (i.e., shareholders).¹⁴¹ This narrow focus on short-term shareholder returns can lead companies to prioritise financial gain over long-term sustainability and social responsibility,¹⁴² often at the expense of other stakeholders and future generations.¹⁴³ In contrast, the intergenerational equity approach calls for a broader understanding of corporate purpose that balances the interests of current and future generations, as well as other stakeholders such as employees, customers, and local communities.¹⁴⁴ This reconceptualisation draws on the growing body of literature on stakeholder theory and sustainable corporate governance.¹⁴⁵ At its core, the intergenerational equity approach to corporate purpose is grounded in the recognition that companies are not merely private economic entities, but also social institutions with a public purpose.¹⁴⁶ As such, companies have a responsibility to contribute to the long-term well-being of society and to ensure that their activities do not undermine the ability of future generations to meet their own needs.¹⁴⁷ This responsibility extends beyond the narrow pursuit of short-term profits and requires companies to consider the long-term social, environmental, and economic impacts of their decisions.¹⁴⁸

¹⁴¹ Companies Act 2006 (CA), s 172(1).

¹⁴² Andrew Keay, 'Ascertaining the Corporate Objective: An Entity Maximisation and Sustainability Model' (2008) 71 MLR 663, 665-666; Andrew Johnston, 'Facing Up to Social Cost: The Real Meaning of Corporate Social Responsibility' (2011) 20 Griffith Law Review 221, 223-224.

¹⁴³ Keay (n 8) 267-268.

¹⁴⁴ Stout (n 58) 695.

¹⁴⁵ See e.g. Andrew C Wicks and others, 'Connecting Stakeholder Theory to the Law and Public Policy in Jeffrey S Harrison and others, The Cambridge Handbook of Stakeholder Theory (CUP 2019) 98.

¹⁴⁶ Stout (n 58) 686.

¹⁴⁷ *ibid.*

¹⁴⁸ *ibid* 695-696

Scholars have proposed various models for operationalising this broader conception of corporate purpose, such as the ‘sustainable value creation’ model,¹⁴⁹ the ‘stakeholder-inclusive’ model,¹⁵⁰ and the ‘purpose-driven’ model.¹⁵¹ While these models differ in their specific formulations, they share a common commitment to integrating sustainability considerations into the core purpose of the company and to balancing the interests of different stakeholders over time. One promising approach is the ‘mission-led business’ model, which has gained traction in recent years.¹⁵² Under this model, companies adopt a specific social or environmental mission that guides their decision-making and operations. This mission is embedded in the company’s constitution and serves as a binding commitment to pursue social and environmental objectives alongside financial returns.¹⁵³ By aligning the company’s purpose with long-term sustainability goals, the mission-led approach can help to ensure that companies are accountable to a broader range of stakeholders and are motivated to create value for society as a whole.¹⁵⁴ Another important aspect of reconceptualising corporate purpose is the need to extend the time horizon of corporate decision-making. The intergenerational equity approach requires companies to consider the long-term impacts of their activities, beyond the typical quarterly or annual reporting cycles.¹⁵⁵ This means considering the potential effects of corporate decisions on future generations and the planet’s life-supporting systems, such as climate stability, biodiversity, and ecosystem services.¹⁵⁶

Extending the corporate time horizon is crucial for addressing the ‘tragedy of the horizon’, whereby the long-term costs and risks of unsustainable business practices are often overlooked or discounted in favour of short-term gains.¹⁵⁷ By adopting a multi-generational perspective, companies can better align their strategies and investments with the long-term interests of society and avoid the pitfalls of short-termism.¹⁵⁸ However, reconceptualising corporate purpose is not without its challenges. Critics argue that expanding the purpose of the company beyond shareholder value maximisation could lead to a lack of clarity and accountability, as directors would have to balance multiple, potentially conflicting objectives.¹⁵⁹ There are also concerns that a broader stakeholder approach could be used to justify managerial entrenchment and reduce the efficiency of corporate decision-making.¹⁶⁰ While these concerns are not unfounded, they can be addressed through careful institutional design and appropriate governance mechanisms. For example, the use of ‘mission-lock’ provisions in company constitutions can help to ensure that directors remain committed to the company’s long-term intergenerational equity goals, even in the face of short-term pressures.¹⁶¹ Similarly, the development of robust intergenerational equity reporting and auditing frameworks can enhance the transparency and accountability of corporate decision-making, while also providing stakeholders with the information they need to assess a company’s performance against its stated purpose.¹⁶²

The effectiveness of mission-lock provisions in constraining managerial behaviour is a valid concern that deserves further examination. Scholars have raised important questions about the enforceability and impact of purpose provisions, arguing that they may have limited practical effect on managerial

¹⁴⁹ Beate Sjøfjell, ‘Sustainable Value Creation Within Planetary Boundaries—Reforming Corporate Purpose and Duties of the Corporate Board’ (2020) 12 Sustainability 6245, 5-6.

¹⁵⁰ Williams (n 29) 372-375.

¹⁵¹ Gerard George and others, *Handbook on the Business of Sustainability* (Edward Elgar 2022) 29-30.

¹⁵² *ibid* 162-163.

¹⁵³ *ibid* 157-159.

¹⁵⁴ Lynn A Stout, *The Shareholder Value Myth: How Putting Shareholders First Harms Investors, Corporations, and the Public* (Berrett-Koehler Publishers 2012) 32-34.

¹⁵⁵ *ibid* 46-51.

¹⁵⁶ *ibid* 27.

¹⁵⁷ Mark Carney, ‘Breaking the Tragedy of the Horizon - Climate Change and Financial Stability’ (Speech at Lloyd’s of London, 29 September 2015) 2-3, available at <<https://www.bis.org/review/r151009a.pdf>> accessed 1 December 2024; Sjøfjell and Taylor (n 59) 49-50.

¹⁵⁸ Carney, *ibid*.

¹⁵⁹ See, e.g., Michael C Jensen, ‘Value Maximization, Stakeholder Theory, and the Corporate Objective Function’ (2002) 12 Business Ethics Quarterly 235, 238-239.

¹⁶⁰ Stephen M Bainbridge, ‘In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green’ (1993) 50 Washington and Lee Law Review 1423, 1435-1440.

¹⁶¹ Raymond Fisman and others, ‘Mission-Driven Governance’ (2009) 3 Stanford Social Innovation Review 36, 39.

¹⁶² *ibid*.

decision-making without clear enforcement mechanisms and sanctions for non-compliance.¹⁶³ However, proponents of purpose-driven governance argue that the inclusion of stakeholder-oriented purposes in corporate charters can have important signalling and norm-setting effects, even if their legal enforceability is limited.¹⁶⁴ Moreover, the effectiveness of purpose provisions may depend on the broader institutional and regulatory context in which they operate, such as benefit corporation statutes or mandatory sustainability reporting requirements.¹⁶⁵ Ultimately, while mission-lock provisions alone may not be sufficient to ensure consistent stakeholder-oriented behaviour by managers, they can be an important component of a broader ecosystem of governance mechanisms and incentives.¹⁶⁶ Further research is needed to assess the effectiveness of different types of purpose provisions and their interaction with other governance mechanisms, as well as to develop more robust enforcement and accountability frameworks.

However, the assumption that there would be stakeholders or individuals in the present who can act as faithful agents of future generations, with the necessary incentives and knowledge to do so, is a strong and potentially problematic one.¹⁶⁷ The question of who can legitimately represent the interests of future generations is a complex one, and there are valid concerns about the potential for agency problems and conflicts of interest.¹⁶⁸ This issue can be analogised with the inherent problem of granting rights to nature.¹⁶⁹ Moreover, the characterisation of environmental and social goods as pertaining to future generations, rather than as intrinsic values or the rights of current generations, is a rhetorical choice that deserves critical examination.¹⁷⁰ However, the challenges of representing future generations in corporate governance do not necessarily negate the value of reporting and auditing frameworks as tools for promoting intergenerational equity. By creating greater transparency and accountability around the long-term impacts of corporate activities, and by serving as a vehicle for stakeholder engagement and dialogue, reporting and auditing frameworks can help to create a more inclusive and accountable governance ecosystem that is better equipped to address long-term sustainability challenges.¹⁷¹

The increasing recognition of intergenerational equity obligations on states under public law provides both inspiration and grounding for extending such duties to companies. As Sulyok highlights, ‘courts appear to delineate the interests of future generations worthy of judicial protection through one of five legal avenues, all of which flow from the rule of law’, including ‘respect for human rights’, ‘quality of law requirements’, prohibiting ‘arbitrary exercise’ of power, ‘non-discrimination, and access to justice’.¹⁷² Companies, as creatures of statute subject to the rule of law, should be equally bound to respect the interests of future generations within these parameters. Courts have begun operationalising intergenerational equity in public law cases by relying on scientific evidence and political commitments enshrined in soft law to assess the adequacy of governmental action.¹⁷³ Sulyok notes that judicial reliance on ‘soft law standards reflects a political consensus, negotiated irrespective of the particular lawsuit, on the measures that courts deem necessary to protect posterity’s long-term interests’.¹⁷⁴ A

¹⁶³ Kershaw and Schuster (n 18) 496; Bebhuk and Tallarita (n 36) 122-123.

¹⁶⁴ Livia Ventura, ‘New trends in legal frameworks for purpose-driven companies – The European ways(s)’ (2023) 20 European Management Review 725, 727-728.

¹⁶⁵ Guido Ferrarini, ‘Corporate Purpose and Sustainability’ (2020) ECGI Law Working Paper No. 559/2020, pp 10, 34.

¹⁶⁶ Ventura (n 164) 730.

¹⁶⁷ Nolan (n 133); see also Julia Bogacki and Peter Letmathe, ‘Representatives of future generations as promoters of sustainability in corporate decision processes’ (2020) 30 Business Strategy and the Environment 237.

¹⁶⁸ On the agency problem, see e.g. Vinay Khandelwal and others, ‘Examining the Impact of Agency Issues on Corporate Performance: A Bibliometric Analysis’ (2023) 16 Journal of Risk and Financial Management 497.

¹⁶⁹ See e.g. Laura Burgers, ‘Private Rights of Nature’ (2022) 11 TEL 463; Visa AJ Kurki, ‘Can Nature Hold Rights? It’s Not as Easy as You Think’ (2022) 11 TEL 525.

¹⁷⁰ For a discourse of intergenerational equity, see Joerg C Tremmel, *A Theory of Intergenerational Justice* (Earthscan 2009) chs 3-4.

¹⁷¹ See e.g. Leonardo Rinaldi, ‘Accounting for Sustainability Governance: The Enabling Role of Social and Environmental Accountability Research’ (2019) 39 Social and Environmental Accountability Journal 1, 7.

¹⁷² Katalin Sulyok, ‘Transforming the Rule of Law in Environmental and Climate Litigation: Prohibiting the Arbitrary Treatment of Future Generations’ (2024 advance access) TEL 1, 25.

¹⁷³ See e.g. Ben Chester Cheong, ‘UK Supreme Court’s Finch Ruling: A Watershed Moment for Fossil Fuel Projects and Climate Action’ (2024) 10 Journal of Planning & Environment Law 1093.

¹⁷⁴ *ibid.*

similar approach could be adopted in the corporate context, with courts evaluating companies' policies against authoritative scientific findings and international standards on sustainability and intergenerational justice.

However, as Nolan cautions, the lack of a clear legal definition of 'future generations' poses challenges for both public and private law adjudication. Indeterminacy regarding the composition and interests of this group can hamper judicial efforts to balance the rights of present and future generations.¹⁷⁵ Developing greater clarity around the legal status and representational parameters of future generations – whether through statutory definition, constitutional interpretation, or common law evolution – will be crucial for enabling meaningful enforcement of intergenerational equity duties in both public and corporate contexts. While doctrinal and practical challenges remain, the increasing recognition of intergenerational equity as a legal imperative for state actors¹⁷⁶ provides a strong foundation for extending similar obligations to companies. By drawing on the principles and problem-solving approaches emerging in public law, UK company law can develop a robust framework for protecting the interests of future generations and ensuring sustainable corporate governance.

Moreover, the benefits of reconceptualising corporate purpose outweigh the potential costs. By aligning corporate activities with the long-term interests of society and the planet, companies can enhance their resilience, reduce their exposure to systemic risks, and create value for a wider range of stakeholders.¹⁷⁷ In the long run, this approach can also help to build public trust and legitimacy, which are essential for the continued success of the corporate sector.¹⁷⁸ A growing body of empirical research suggests a positive relationship between corporate sustainability practices and long-term financial performance.¹⁷⁹ For example, a study by Eccles et al found that companies with strong sustainability policies and practices had significantly higher stock market performance and accounting profitability over a period of 18 years, compared to a matched sample of companies with weak sustainability policies.¹⁸⁰ Similarly, a meta-analysis by Friede et al found a positive correlation between corporate environmental and social performance and financial performance, based on a review of over 2,000 empirical studies.¹⁸¹

However, it is important to interpret these findings with caution. Correlation does not necessarily imply causation, and the relationship between sustainability and financial performance is likely to be complex and context dependent.¹⁸² It is possible that companies with better financial performance are more likely to invest in sustainability initiatives, rather than sustainability driving financial performance.¹⁸³ Additionally, the voluntary adoption of sustainability practices may signal other characteristics, such as superior management quality or risk mitigation strategies, that contribute to financial performance.¹⁸⁴ Moreover, the pursuit of intergenerational equity through mandatory corporate law provisions could have different effects on corporate performance than voluntary sustainability initiatives. Companies may face additional costs and constraints in complying with legal requirements to consider the interests of future generations, potentially impacting their competitiveness and profitability.¹⁸⁵ There may also be trade-offs between short-term financial performance and long-term sustainability, as companies

¹⁷⁵ Nolan (n 133) 2.

¹⁷⁶ Margaretha Wewerinke-Singh et al, 'In Defence of Future Generations: A Reply to Stephen Humphreys' (2023) 34 EJIL 651, 657-666.

¹⁷⁷ Beate Sjøfjell, 'Realising the Potential of the Board for Corporate Sustainability' in Beate Sjøfjell and Christopher M Bruner (eds), *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (CUP 2019) 705-706.

¹⁷⁸ Colin Mayer, *Prosperity: Better Business Makes the Greater Good* (OUP 2018) 81-83

¹⁷⁹ Eccles and others (n 20); Friede and others (n 61).

¹⁸⁰ Eccles and others (n 20) 2847-2848.

¹⁸¹ Friede and others (n 61) 225.

¹⁸² Carlos Lassala and others, 'Sustainability Matter and Financial Performance of Companies' (2017) 9 Sustainability 1498; Zuoming Liu, 'Unraveling the complex relationship between environmental and financial performance – A multilevel longitudinal analysis' (2020) 219 International Journal of Production Economics 328.

¹⁸³ Jing Lu and others, 'Are firms with better sustainability performance more resilient during crises?' (2022) 31 Business Strategy and the Environment 3354, 3366.

¹⁸⁴ Peter Tashman, 'Why Do Firms Participate in Voluntary Environmental Programs? A Meta-Analysis of the Role of Institutions, Resources, and Program Stringency' (2022) 35 Organization & Environment 3, 5-11.

¹⁸⁵ Antoine Dechezleprete and Misato Sato, 'The Impacts of Environmental Regulations on Competitiveness' (2017) 11 Review of Environmental Economics and Policy 183, 196-197.

invest in low-carbon technologies, sustainable supply chains, or community development projects.¹⁸⁶ Navigating these trade-offs requires a nuanced approach that recognises the importance of both short-term survival and long-term value creation. While some sustainability investments may entail short-term costs, they can also generate long-term benefits by reducing risks, enhancing reputation, and opening up new market opportunities.¹⁸⁷ Companies that prioritise intergenerational equity may be better positioned to anticipate and adapt to changing societal expectations and regulatory environments, building resilience and competitive advantage over time.¹⁸⁸ Ultimately, the relationship between intergenerational equity and corporate performance is likely to depend on a range of factors, including the specific practices and strategies adopted, the industry and market context, and the time horizon considered.¹⁸⁹ While the empirical evidence suggests that sustainability and financial performance can be mutually reinforcing, the integration of intergenerational equity into corporate law will require careful consideration of the potential costs and benefits, as well as the development of appropriate incentives and governance mechanisms to support long-term value creation for all stakeholders.

There is a need to distinguish the intergenerational equity approach from the broader sustainability discourse in corporate law. While there is some overlap between the two, the intergenerational equity perspective offers a distinct and valuable contribution to the debate on corporate purpose. The key difference lies in the explicit focus on the rights and interests of future generations. While sustainability is often framed in terms of balancing economic, social, and environmental considerations in the present, intergenerational equity emphasises the temporal dimension and the obligations of current generations to ensure a fair and sustainable world for those who will come after us.¹⁹⁰ In the corporate context, this means going beyond the traditional stakeholder approach, which tends to prioritise the interests of current stakeholders, such as employees, customers, and local communities. The intergenerational equity perspective requires companies to consider the long-term impacts of their activities on future generations and to make decisions that protect and enhance the well-being of these yet-to-be-born stakeholders.¹⁹¹ This future-oriented focus has important implications for how we conceive of corporate purpose. It suggests that companies have a duty not only to create value for their current shareholders and stakeholders, but also to preserve and enhance the social, environmental, and economic resources that will be needed by future generations.¹⁹² In other words, the purpose of the company is not just to maximise short-term profits or balance current stakeholder interests, but to ensure the long-term sustainability and resilience of the firm and the broader systems in which it operates.¹⁹³

One way to operationalise this intergenerational perspective is through the concept of ‘stewardship’. In the corporate context, stewardship can be understood as the responsible management of entrusted resources for the benefit of current and future generations.¹⁹⁴ This implies a shift away from the ‘property’ conception of the firm, which sees shareholders as the ultimate owners of the company,¹⁹⁵ towards a ‘stewardship’ model, where directors and managers are seen as trustees of the company’s resources, with a duty to preserve and enhance these resources for the benefit of all stakeholders, including future generations.¹⁹⁶ Scholars such as Sjäfjell and Bruner have argued that this stewardship

¹⁸⁶ Enes Unal and Vikash Kumar Sinha, ‘Sustainability trade-offs in the circular economy: A maturity-based framework’ (2023) 32 *Business Strategy and the Environment* 4662.

¹⁸⁷ Philipp Haessler, ‘Strategic Decisions between Short-Term Profit and Sustainability’ (2020) 10 *Administrative Sciences* 63.

¹⁸⁸ Natalia Ortiz-de-Mandojana and Pratima Bansal, ‘The long-term benefits of organizational resilience through sustainable business practices’ (2015) 37 *Strategic Management Journal* 1615.

¹⁸⁹ Zhihong Wang and Joseph Sarkis, ‘Corporate social responsibility governance, outcomes, and financial performance’ (2017) 162 *Journal of Cleaner Production* 1607.

¹⁹⁰ Brown Weiss (n 4), ‘In Fairness to Future Generations and Sustainable Development’ 20-21; Lynda M Collins, ‘Revisiting the Doctrine of Intergenerational Equity in Global Environmental Governance’ (2007) 30 *Dalhousie Law Journal* 79, 83-85.

¹⁹¹ Collins, *ibid*, 125-127.

¹⁹² Sjäfjell (n 177) 705-706.

¹⁹³ Ferrarini (n 165) 9-11.

¹⁹⁴ Emily Barritt, ‘Conceptualising Stewardship in Environmental Law’ (2014) 26 *JEL* 1, 6-10.

¹⁹⁵ Michael Jensen and William Meckling, ‘Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure’ (1976) 3 *Journal of Financial Economics* 305, 307-308; Virgile Chassagnon and Xavier Hollandts, ‘Who are the owners of the firm: shareholders, employees or no one?’ (2014) 10 *Journal of Institutional Economics* 47, 50-54.

¹⁹⁶ Andrew Keay, ‘Stewardship Theory: Is Board Accountability Necessary?’ (2017) 59 *International Journal of Law and Management* 1292, 1296-1301.

approach is essential for addressing the long-term sustainability challenges facing corporate law.¹⁹⁷ They suggest that directors should have a legal duty to act as ‘planetary stewards’, taking into account the impact of their decisions on the planet’s life-supporting systems and the interests of future generations.¹⁹⁸ This would require a fundamental reorientation of corporate purpose, moving beyond the narrow focus on shareholder value towards a more holistic and future-oriented understanding of the firm’s role in society.¹⁹⁹

Another key difference between the intergenerational equity approach and the broader sustainability discourse is the emphasis on intertemporal justice.²⁰⁰ Intergenerational equity is grounded in the idea that each generation has a right to inherit a world that is in no worse condition than the one enjoyed by previous generations, and a corresponding duty to pass on a world that is in no worse condition to future generations.²⁰¹ This principle of intertemporal distributive justice has important implications for how we think about corporate responsibility and the allocation of resources over time.²⁰² In the corporate context, this means that companies have an obligation to consider the distributional consequences of their activities across generations and to ensure that their actions do not unfairly burden or disadvantage future generations.²⁰³ This could involve, for example, investing in research and development to find more sustainable ways of producing goods and services, or setting aside resources to fund long-term environmental restoration and social regeneration projects.²⁰⁴

The intergenerational equity approach also has important implications for how we measure and report on corporate performance. Traditional accounting and reporting practices tend to focus on short-term financial metrics, such as quarterly earnings and share prices, which can create incentives for companies to prioritise short-term gains over long-term sustainability.²⁰⁵ The intergenerational equity perspective suggests that we need new metrics and reporting frameworks that better capture the long-term social, environmental, and economic impacts of corporate activities, and that enable stakeholders to hold companies accountable for their effects on future generations.²⁰⁶ Some scholars have proposed new accounting and reporting models that explicitly incorporate intergenerational considerations, such as the ‘Comprehensive Accounting in Respect of Ecology’ (CARE) model.²⁰⁷ The CARE model seeks to measure and report on the ‘intergenerational equity value’ of a company, taking into account its impact on natural, social, and human capital over time.²⁰⁸ Other proposals include the development of ‘integrated reporting’ frameworks that combine financial and intergenerational equity information, and the use of ‘future-fit’ benchmarks that assess a company’s performance against long-term intergenerational equity goals.²⁰⁹

¹⁹⁷ Beate Sjøfjell and Christopher M Bruner, ‘Corporations and Sustainability’ in Beate Sjøfjell and Christopher M Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (CUP 2019) 3, 8-10.

¹⁹⁸ *ibid* 4.

¹⁹⁹ *ibid*.

²⁰⁰ Collins (n 190) 98-101.

²⁰¹ Brown Weiss, *In Fairness to Future Generations* (n 4) 2, 21-28,

²⁰² Collins (n 190) 101-102.

²⁰³ John H Beck, ‘Distributive Justice and the Rules of the Corporation: Partial Versus General Equilibrium Analysis’ (2005) 15(3) *Business Ethics Quarterly* 355.

²⁰⁴ Jingchen Zhao, ‘Extraterritorial Attempts at Addressing Challenges to Corporate Sustainability’ in Beate Sjøfjell and Christopher M Bruner (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (CUP 2019) 32.

²⁰⁵ ‘EBA Report on Undue Short-Term Pressure from the Financial Sector on Corporations’ (European Banking Authority, 18 December 2019) 43.

²⁰⁶ Timothy F Slaper and Tanya J Hall, ‘The Triple Bottom Line: What Is It and How Does It Work?’ (2011) 86 *Indiana Business Review* 4, 5-7.

²⁰⁷ Alexandre Rambaud, ‘How Can Accounting Reformulate the Debate on Natural Capital and Help Implement Its Ecological Approach?’ (2024) 53 *International Journal of Political Economy* 67, 83-84.

²⁰⁸ *ibid* 85-86.

²⁰⁹ Neelam Setia and others, ‘In Search of a Wider Corporate Reporting Framework: A Critical Evaluation of the International Integrated Reporting Framework’ (2022) 19 *Accounting in Europe* 423, 433-435; ‘Future-Fit Business Benchmark’ (Future-Fit Foundation, June 2021), available at: <<https://benchmark.futurefitbusiness.org/>> accessed 1 December 2024.

B. Revising s 172 of the Companies Act 2006

The second element of the framework involves expanding the duties of company directors. Under the current legal framework, directors' duties are primarily owed to the company and its shareholders, with a focus on promoting the success of the company for the benefit of its members.²¹⁰ UK company law has been undergoing significant reforms in recent years, particularly with the enactment of the Companies Act 2006. One key aim of these reforms was to increase the law's accessibility, coherence, and comprehensibility for company directors.²¹¹ This included codifying directors' duties in ss 170-181 of the Companies Act 2006.²¹² However, certain important societal considerations, such as intergenerational equity, are not explicitly addressed in these codified duties. The concept of intergenerational equity should be integrated into UK company law, to ensure companies operate in a manner that is sustainable and fair to both current and future generations. The codification of directors' duties in the Companies Act 2006 was intended to make the law clearer and more accessible, particularly for directors of small and medium enterprises (SMEs) who may not have ready access to extensive legal advice.²¹³ However, the Act is incomplete and still requires reference to the common law in many areas.²¹⁴ This interpretation of the statutory duties' relationship with prior common law is illustrated in cases such as *West Coast Capital (Lios) Ltd*, where Lord Glennie noted that ss 171-172 'appear to do little more than set out the pre-existing law on the subject',²¹⁵ and *Eastford Ltd v Gillespie*, where Lord Hodge explained that Parliament intended the statutory statement to make directors' duties more accessible while allowing courts to continue developing these principles in line with changing commercial circumstances.²¹⁶

More fundamentally, the Act focuses primarily on directors acting in a way that promotes the success of the company for the benefit of its current members (shareholders) as a whole.²¹⁷ While directors must 'have regard to' certain other stakeholder interests like employees, suppliers, customers, the community and environment,²¹⁸ these are secondary considerations. The Act does not require or encourage directors to factor in long-term sustainability or the interests of future generations. In *R (on the application of People & Planet) v HM Treasury*, the court examined how environmental considerations interact with directors' duties under s 172 of the Companies Act 2006 in the context of government shareholding. The court found that while UKFI could properly encourage RBS to consider environmental and human rights issues as part of its commercial decision-making, forcing RBS to prioritise these over commercial considerations would risk conflicting with the directors' duties to promote the company's success. This highlighted how directors must balance various factors under s 172, but within the overall framework of promoting the company's success.²¹⁹ This duty could override other considerations, such as environmental policies, if the directors judged that these were not in the company's best interests.

The Act's remedies for breach of directors' duties maintain strong connections to equitable and common law principles, as illustrated in *Towers v Premier Waste Management Ltd*. The Court explained that while the 2006 Act codified directors' duties, they are 'expressly derived from common law rules and equitable principles' and should be 'interpreted and applied in the same way'.²²⁰ The case reinforces the 'strict nature of liability' for breach of duty, noting that liability does not depend on 'proof of fault or proof that a conflict of interest has in fact caused the company loss'.²²¹ While the Act has made some

²¹⁰ Susan Watson and Lynn Buckley, 'Directors' positive duty to act in the interests of the entity: shareholders' interests bounded by corporate purpose' (2024) 24 Journal of Corporate Law Studies 233, 241.

²¹¹ Department of Trade and Industry, 'Company Law Reform' (Cm 6456, March 2005) para 3.3.

²¹² CA (n 141), ss 170-181.

²¹³ Company Law Reform (n 211) para 3.3.

²¹⁴ Parker Hood, 'Directors' Duties Under the Companies Act 2006: Clarity or Confusion?' (2013) 13 Journal of Corporate Law Studies 1, 6-7.

²¹⁵ *West Coast Capital (Lios) Ltd, Re An Order Under Section 994 of the Companies Act 2006* [2008] CSOH 72 [21].

²¹⁶ *Eastford Limited v Thomas Graham Gillespie and Airdrie North Limited* [2009] CSOH 119 [8]-[9].

²¹⁷ CA (n 141), s 172(1).

²¹⁸ *ibid*, s 172(1)(a)-(f).

²¹⁹ *HM Treasury* (n 137) [33]-[35].

²²⁰ *Towers v Premier Waste Management Ltd* [2011] EWCA Civ 923 [3], [5].

²²¹ *ibid* at [9], [10]; Hood (n 214) 6.

positive changes, such as clarifying that directors owe their duties to the company rather than directly to shareholders,²²² as was established in the seminal case of *Percival v Wright*,²²³ it still operates within a shareholder primacy paradigm. Short-term shareholder interests can trump long-term sustainability considerations.²²⁴ The Act does little to inculcate a culture of intergenerational equity. A revised Act should make it mandatory for directors to consider the long-term sustainability of the company and the interests of future generations in their decision-making. The intergenerational equity approach calls for expanding these duties to include a duty to consider the long-term impacts of corporate actions on future generations.²²⁵ This expanded duty would require directors to assess the potential long-term consequences of their decisions, including environmental and social impacts, and to prioritise long-term sustainability over short-term gains.²²⁶ Historical cases such as *Hutton v West Cork Railway Co*²²⁷ helped shape the concept of directors' duties, by requiring that consideration of employee interests must be tied to promoting the company's business interests. The intergenerational equity approach goes further by explicitly mandating consideration of future generations and long-term sustainability.

Extending fiduciary duties to include the interests of future generations raises significant challenges for legal enforcement and judicial interpretation. Fiduciary duties are typically owed to specific beneficiaries, such as shareholders or pension plan participants, who have standing to bring legal claims against fiduciaries for breach of duty.²²⁸ In the case of future generations, there are no identifiable beneficiaries who can directly enforce their rights, creating a 'representation problem'.²²⁹ Moreover, the interests of future generations are inherently uncertain and complex, involving long-term, systemic, and often intangible impacts that are difficult to quantify and balance against short-term considerations. While courts may face challenges in determining whether particular business decisions align with the interests of future generations, given the lack of universally accepted standards and potential for disagreement on long-term consequences, recent public law cases demonstrate that courts are increasingly able to define and protect such interests in the context of intergenerational equity claims against governments.²³⁰

For example, Sulyok highlights that courts have relied on scientific evidence and soft law commitments to assess the adequacy of government climate measures in light of the rights of future generations.²³¹ In the UK company law context, this could translate into a more robust interpretation of directors' duties under Section 172(1)(a) of the Companies Act 2006. While courts have traditionally been reluctant to second-guess business decisions, the public law experience suggests ways to develop more concrete standards for evaluating long-term impacts. For instance, just as courts have accepted scientific evidence of climate impacts in public law cases, they could similarly incorporate established sustainability metrics and environmental impact assessments in evaluating corporate decisions. Existing legal doctrines, such as the public trust doctrine,²³² could potentially be adapted to help address these challenges in the corporate law context. As analysed by Sulyok, the public trust doctrine has been successfully invoked in public law environmental litigation to constrain government decision-making that arbitrarily impairs the needs of future generations.²³³ This doctrine, which positions governments

²²² CA (n 141), s 170(1); Hood (n 214) 13-14.

²²³ *Percival v Wright* [1902] 2 Ch 421 - directors of a company did not owe fiduciary duties directly to shareholders who wanted to sell their shares to them.

²²⁴ Mark J Roe, 'Corporate Short-Termism – In the Boardroom and in the Courtroom' (2013) 68 *The Business Lawyer* 977, 1004.

²²⁵ Stout (n 58) 705-708.

²²⁶ *ibid*.

²²⁷ *Hutton v West Cork Railway Co* (1883) 23 Ch D 654.

²²⁸ Andrew S Gold, and Paul B Miller, 'Fiduciary Duties in Social Enterprise' in Benjamin Means and Joseph W. Yockey (eds), *The Cambridge Handbook of Social Enterprise Law* (CUP 2019) 323-324, 340.

²²⁹ Peter Lawrence, 'Justifying Representation of Future Generations and Nature: Contradictory or Mutually Supporting Values?' (2022) 11 TEL 553, 556; see also Brown Weiss (n 4) 'In Fairness to Future Generations' 24-25.

²³⁰ *Urgenda Foundation v State of the Netherlands* [2019] ECLI:NL:HR:2019:2006; *Neubauer v Germany* [2021] BVerfG 1 BvR 2656/18; Sulyok, 'Transforming the Rule of Law' (n 172) 12-14.

²³¹ *ibid* 19, 23; see also Geetanjali Ganguly and others, 'If at First You Don't Succeed: Suing Corporations for Climate Change' (2018) 38 OJLS 841.

²³² See e.g. *National Audubon Society v Superior Court* [1983] 33 Cal.3d 419.

²³³ Sulyok, 'Transforming the Rule of Law' (n 172) 18.

as trustees obligated to preserve natural resources for present and future beneficiaries, provides a promising avenue for grounding and enforcing fiduciary duties to future generations within company law as well.²³⁴ Analogously, corporate directors could be viewed as trustees not just of current shareholder interests, but of the company's long-term sustainability and its impact on future stakeholders.

The Court of Appeal's judgment in *R (Boswell) v Secretary of State for Transport*²³⁵ provides important insights into how courts assess cumulative climate impacts that will affect future generations. Several key principles emerge that are relevant for integrating intergenerational equity into company law. The court emphasised that assessing environmental impacts affecting future generations requires 'measured judgment' applied to scientific evidence.²³⁶ This suggests courts can evaluate corporate climate impacts through a similar evidence-based framework. The judgment emphasised the need to consider impacts through 2050 and beyond, noting that 'carbon budgets which themselves set net cumulative targets which the UK as a whole...is obliged to meet on its trajectory towards the mandatory net zero target in 2050'.²³⁷ This supports requiring companies to engage in long-term climate planning. The court stressed that decision-makers must act based on 'current scientific knowledge'²³⁸ suggesting companies could be required to align policies with evolving climate science. The judgment's emphasis on evidence-based decision-making, cumulative impacts, and long-term planning provides a useful template for how courts could evaluate corporate climate obligations to future generations. The 'range of reasonable decisions' test offers a balanced framework that could hold companies accountable while respecting legitimate business judgment. The judgment illuminates how similar principles could be developed in the corporate context to protect intergenerational interests while providing clarity to companies about their obligations. It demonstrates courts' growing sophistication in evaluating long-term climate impacts through a rigorous but pragmatic lens.

Another approach is to establish specialised courts or tribunals with expertise in intergenerational equity and sustainability issues, similar to the environmental courts and tribunals that have been established in some jurisdictions.²³⁹ These courts could be empowered to hear claims brought by public interest organisations or government entities on behalf of future generations, and to develop jurisprudence on the scope and content of fiduciary duties to future generations over time.²⁴⁰ Reliance could also be placed on 'proxy enforcement' mechanisms, such as public enforcement by regulatory agencies or private enforcement by civil society organisations, to hold corporations accountable for breaches of fiduciary duties to future generations.²⁴¹ This could involve the use of mandatory sustainability reporting and disclosure requirements, as well as the establishment of independent monitoring and enforcement bodies, such as the proposed Ombudsman and stakeholder councils.²⁴² Additionally, the enforcement of fiduciary duties to future generations could be supported by the development of soft law norms and guidelines, such as stewardship codes, corporate governance principles, and sustainability standards, that provide guidance on best practices for integrating intergenerational equity into corporate decision-making.²⁴³ While not legally binding, these norms can help shape corporate behaviour and provide a basis for stakeholder pressure and engagement.²⁴⁴ Ultimately, the enforcement

²³⁴ *ibid.*

²³⁵ *R (Boswell) v Secretary of State for Transport* [2024] EWCA Civ 145.

²³⁶ *ibid* [33].

²³⁷ *ibid* [49].

²³⁸ *ibid* [52].

²³⁹ Brian J Preston, 'Characteristics of Successful Environmental Courts and Tribunals' (2014) 26 JEL 365.

²⁴⁰ Peter Lawrence, 'International Law Must Respond to the Reality of Future Generations: A Reply to Stephen Humphreys' (2023) 34 EJIL 669, 676-678.

²⁴¹ Barnali Choudhury, 'Corporate Law's Threat to Human Rights: Why Human Rights Due Diligence Might Not Be Enough' (2023) 8 Business and Human Rights Journal 180, 188.

²⁴² Brett McDonnell, 'Stakeholder Governance as Governance by Stakeholders' (2024) 47 Seattle University Law Review 511, 532.

²⁴³ Dionysia Katelouzou and Konstantinos Sergakis, 'Shareholder Stewardship Enforcement' (2020) ECGI Law Working Paper No 514/2020, 34-35.

²⁴⁴ Sarah Joseph and Joanna Kyriakakis, 'From soft law to hard law in business and human rights and the challenge of corporate power' (2023) 36 Leiden Journal of International Law 335, 337.

of fiduciary duties to future generations will require a combination of legal, regulatory, and market-based mechanisms, as well as a shift in corporate culture and values towards a more long-term and inclusive perspective.²⁴⁵ While there are significant challenges to overcome, the extension of fiduciary duties to future generations represents an important step towards aligning corporate governance with the imperatives of sustainability and intergenerational justice.

C. Enhancing Accountability Mechanisms

The third element of the framework involves enhancing accountability mechanisms to ensure that companies are held responsible for their impacts on future generations. While current ESG approaches often rely on voluntary disclosure and market-based accountability mechanisms, such as shareholder activism and consumer pressure, the intergenerational equity framework would create new legal accountability and enforcement mechanisms.²⁴⁶ This entails establishing new regulatory bodies and oversight mechanisms that are specifically focused on protecting the interests of future generations.²⁴⁷ For example, a proposed ‘future generations commissioner’ or ombudsperson office would have the authority to represent the interests of future generations in legal proceedings and hold companies accountable for breaches of their intergenerational obligations.²⁴⁸ Other solutions could include the creation of ‘stakeholder councils’ that would be responsible for overseeing and advising on a company’s long-term intergenerational equity strategy and performance. These institutions could be given the power to investigate and prosecute companies for activities that threaten the long-term sustainability of society and the planet, and to seek remedies that prioritise the needs of future generations.²⁴⁹ They could also be tasked with developing and monitoring key intergenerational equity indicators and targets and reporting on the company’s progress towards meeting these goals. Additionally, expanded standing provisions would allow a broader range of stakeholders, including representatives of future generations, to bring legal claims against companies for harms to their interests.²⁵⁰ Currently, the ability to bring legal claims against companies for environmental and social harms is often limited to those who can demonstrate a direct and immediate injury.²⁵¹ This narrow conception of standing excludes many of the long-term and diffuse harms that are associated with corporate activities, such as and intergenerational poverty.²⁵²

The proposed future generations Ombudsman and stakeholder councils are intended to serve as institutional mechanisms for representing and safeguarding the interests of future generations in corporate decision-making processes. However, these proposals raise important concerns about their legitimacy, effectiveness, and potential for abuse. One key challenge is the question of representation: how can individuals or entities in the present claim to speak on behalf of future generations, whose preferences and values are inherently uncertain?²⁵³ There is a risk that the Ombudsman and stakeholder councils could be captured by narrow interest groups or used to advance particular ideological agendas (i.e. stakeholder ‘partiality’), rather than truly serving the interests of future generations as a whole.²⁵⁴ Another concern is the potential for these institutions to exacerbate the agency problem, by introducing

²⁴⁵ Barnali Choudhury and Martin Petrin, ‘Struck in Neutral? Reforming Corporate Purpose and Fiduciary Duties’ (2023) 67 Canadian Business Law Journal 291.

²⁴⁶ Edith Brown Weiss, ‘Implementing Intergenerational Equity’ in Malgosia Fitzmaurice and others (eds), *Research Handbook on International Environmental Law* (Edward Elgar 2010) 109.

²⁴⁷ Natalie Jones and others, ‘Representation of Future Generations in United Kingdom Policy-Making’ (2018) 102 Futures 153, 160-163.

²⁴⁸ Haydn Davies, ‘The Well-being of Future Generations (Wales) Act 2015 – A Step Change in the Legal Protection of the Interests of Future Generations?’ (2017) 29 JEL 165, 172-173; Göpel (n 95).

²⁴⁹ Jones and others, ‘Representation of Future Generations’ (n 247) 160-163.

²⁵⁰ Ole W Pedersen and Katalin Sulyok, ‘Future Generations Litigation and Transformative Changes in Environmental Governance’ (2024 advance access) TEL 1, 7-8.

²⁵¹ Ganguly (n 231) 852.

²⁵² *ibid* 852, 856.

²⁵³ Stephen Humphreys, ‘Against Future Generations’ (2022) 33 EJIL 1061, 1064-1066.

²⁵⁴ Amir N Licht, ‘Stakeholder Impartiality: A New Classic Approach for the Objectives of the Corporation’ in Arthur B Laby and Jacob Hale Russell (eds), *Fiduciary Obligations in Business* (CUP 2021) 313-315.

additional layers of bureaucracy and diluting managerial accountability.²⁵⁵ The Ombudsman and stakeholder councils could face their own agency problems, as there would be no direct mechanism for future generations to hold them accountable for their decisions and actions. To address these concerns, the design and implementation of the Ombudsman and stakeholder councils must be carefully considered.

One approach is to establish clear selection criteria and appointment processes that prioritise expertise, independence, and diversity, drawing on the knowledge and perspectives of multiple stakeholders and disciplines.²⁵⁶ This could involve the use of participatory and deliberative processes, such as citizen assemblies or multi-stakeholder dialogues, to identify and articulate the interests of future generations.²⁵⁷ Another important safeguard is the establishment of robust transparency and accountability mechanisms, such as regular reporting requirements, external audits, and opportunities for public scrutiny and feedback. The Ombudsman and stakeholder councils should be subject to clear performance standards and evaluation criteria, with provisions for removal or sanction in cases of misconduct or negligence. Additionally, their role and authority should be clearly defined and limited, with appropriate checks and balances to prevent overreach or abuse of power.²⁵⁸ Ultimately, the effectiveness of the Ombudsman and stakeholder councils will depend on their ability to navigate the complex trade-offs and uncertainties involved in representing the interests of future generations, while maintaining the trust and support of both current stakeholders and the broader public. This will require ongoing experimentation, learning, and adaptation, as well as a commitment to transparency, inclusiveness, and accountability. As Koskeniemi observes, ‘unlike animals, humans operated under rules... this bound human beings to directives of action they should follow even when, at least in the short term, doing so might go against their immediate interests’.²⁵⁹ It is thus arguable that once there is a norm in place to protect future generations, this will be recognised as the new rule of law. While no institutional arrangement can perfectly represent the interests of future generations, the establishment of dedicated entities to advocate for intergenerational equity can help counterbalance short-term pressures and ensure that long-term considerations are not overlooked in corporate decision-making.

In addition to expanding legal standing, the intergenerational equity approach also seeks to strengthen disclosure and reporting requirements around corporate sustainability performance.²⁶⁰ Currently, corporate reporting is primarily focused on short-term financial metrics, with limited disclosure of environmental and social impacts.²⁶¹ This lack of transparency makes it difficult for stakeholders to assess a company’s true sustainability performance and to hold directors accountable for their decisions.²⁶² The proposed framework would require companies to assess and report on their long-term intergenerational impacts and risks, and to disclose how they are addressing the needs and interests of future generations in their decision-making. These enhanced disclosure requirements would provide stakeholders with the information and data they need to hold companies accountable for their intergenerational equity performance.²⁶³ A new intergenerational equity reporting frameworks would require companies to disclose their long-term impacts on society and the environment, and to report on their progress towards meeting sustainability targets.²⁶⁴ These frameworks could be based on existing standards, such as the Global Reporting Initiative (GRI) and the Sustainability Accounting Standards

²⁵⁵ Stout (n 58) 705-708.

²⁵⁶ Lara Johannsdottir and Brynhildur Davidsdottir, ‘Proposed paradigm shift from shareholders and stakeholders to future successors’ (2024) 5 *Discover Sustainability* 194, para 3.2.

²⁵⁷ Alberto Alemanno, ‘Protecting Future People’s Future: How to Operationalise Present People’s Unfulfilled Promises to Future Generations’ (2024) 14 *European Journal of Risk Regulation* 641, 651-653.

²⁵⁸ Stephen M Gardiner, ‘On the Scope of Institutions for Future Generations: Defending an Expansive Global Constitutional Convention That Protects against Squandering Generations’ (2022) 36 *Ethics & International Affairs* 157, 168-169.

²⁵⁹ Martti Koskeniemi, ‘Imagining the Rule of Law: Rereading the Grotian “Tradition”’ (2019) 30 *EJIL* 17, 34.

²⁶⁰ Charlotte Villiers, *Corporate Reporting and Company Law* (CUP 2006) 232-234; Choudhury (n 71).

²⁶¹ David Monciardini, ‘The “Coalition of the Unlikely” Driving the EU Regulatory Process of Non-Financial Reporting’ (2016) 36 *Social and Environmental Accountability Journal* 76, 80-82.

²⁶² Maria Chiara Demartini and others, ‘Does the transparency of sustainability reports matter? A quantitative assessment’ (2024) *Corporate Social Responsibility and Environmental Management* 1, 2.

²⁶³ Villiers (n 65) 558-559.

²⁶⁴ *ibid* 563-565.

Board (SASB), but would need to be expanded to include specific indicators and metrics related to intergenerational equity.²⁶⁵ By increasing transparency and enabling more effective stakeholder monitoring and enforcement, the intergenerational equity approach aims to create a more accountable and sustainable corporate governance system that prioritises the interests of future generations and the long-term health of society and the planet.

Accountability is a fundamental principle of corporate governance, and it is essential for ensuring that companies act in a manner that is consistent with their legal and ethical obligations.²⁶⁶ However, the current accountability mechanisms in corporate law are primarily focused on protecting the interests of shareholders and other current stakeholders, rather than safeguarding the rights and interests of future generations.²⁶⁷ Under the shareholder primacy model, the primary accountability mechanism is the fiduciary duty of directors to promote the success of the company for the benefit of its members.²⁶⁸ This duty is enforced through a range of legal and market-based mechanisms, such as shareholder derivative actions, proxy contests, and hostile takeovers.²⁶⁹ While these mechanisms can be effective in aligning the interests of directors with those of shareholders,²⁷⁰ they do little to ensure that companies are accountable to future generations or the broader public interest. To address this gap, some scholars have proposed the recognition of new legal rights and causes of action that would allow a broader range of stakeholders, including future generations, to hold companies accountable for their impacts.²⁷¹ For example, there have been calls for the recognition of a legal right to a healthy environment,²⁷² which would enable individuals and groups to bring claims against companies for activities that threaten the long-term sustainability of the planet.²⁷³ Similarly, the creation of a new tort of ‘intergenerational environmental harm’ would allow future generations to seek redress for the long-term ecological damage caused by corporate activities.²⁷⁴

There is also a need for enhanced internal accountability mechanisms that can embed intergenerational equity considerations into corporate decision-making processes. This could involve the integration of intergenerational equity criteria into executive compensation schemes, so that directors are incentivised to prioritise long-term value creation over short-term profits.²⁷⁵ It could also involve the use of ‘intergenerational equity scorecards’ that provide a more holistic view of a company’s performance.²⁷⁶ Another important aspect of accountability is the ability of stakeholders to engage with and influence corporate decision-making processes.²⁷⁷ Currently, shareholder engagement is primarily focused on short-term financial issues, with limited opportunities for other stakeholders to have their voices heard.²⁷⁸ Intergenerational equity requires a more inclusive and participatory approach to corporate governance, one that gives a voice to a broader range of stakeholders, including future generations.²⁷⁹ The use of new technologies, such as online platforms and social media, can help to facilitate broader

²⁶⁵ Donato Calace, ‘Battle of Giants: GRI vs SASB vs IR’ (GreenBiz, 14 March 2016), available at: <<https://www.greenbiz.com/article/battle-giants-gri-vs-sasb-vs-ir>> accessed 18 May 2024.

²⁶⁶ Kimberly Krawiec, ‘Organizational Misconduct: Beyond the Principal-Agent Model’ (2005) 32 Florida State University Law Review 571, 575-577.

²⁶⁷ Stout (n 58) 706-707.

²⁶⁸ CA (n 141), s 172.

²⁶⁹ Derek French, *Mayson, French, and Ryan on Company Law* (38th edn, OUP 2023) chs 16 and 18.

²⁷⁰ Keay (n 28) 8.

²⁷¹ Choudhury (n 241), 192-196.

²⁷² Emily Barritt, ‘The Aarhus Convention and the Latent Right to a Healthy Environment’ (2024) 36 JEL 67.

²⁷³ Benjamin J Richardson and Beate Sjøfjell, ‘Business and Industry’ in Lavanya Rajamani and Jacqueline Peel (eds), *The Oxford Handbook of International Environmental Law* (2nd edn, OUP 2021) 727-729.

²⁷⁴ See Caroline E Foster, ‘Novel climate tort? The New Zealand Court of Appeal decision in *Smith v Fonterra Co-operative Group Limited and others*’ (2022) 24 ELR 224; Maria Hook and others, ‘Tort to the Environment: A Stretch Too Far or a Simple Step Forward? *Smith v Fonterra Co-operative Group Ltd and Others* [2020] NZHC 419’ (2021) 33 JEL 195.

²⁷⁵ Alberto Salazar and Muthana Mohamed, ‘The Duty of Corporate Directors to Tie Executive Compensation to the Long-Term Sustainability of the Firm’ (2018) 60 Canadian Business Law Journal 234, 243.

²⁷⁶ See generally Stephane Zuber, ‘Measuring Intergenerational Fairness’ in Iñigo González-Ricoy and Axel Gosseries (eds), *Institutions for Future Generations* (OUP 2016).

²⁷⁷ Millon (n 64) 1016-1018.

²⁷⁸ *ibid* 1040-1041.

²⁷⁹ Sjøfjell, ‘Redefining the Corporation’ (n 21) 40.

public participation in corporate decision-making processes. However, there are concerns about the potential costs and complexities of implementing new accountability mechanisms, particularly for smaller companies and those operating in developing countries.²⁸⁰ There are also questions about the enforceability of these mechanisms, particularly in the absence of strong legal and regulatory frameworks.²⁸¹ To address these challenges, it is necessary to develop a range of complementary accountability mechanisms that can be tailored to different contexts and stakeholder groups. This could involve a mix of legal, regulatory, and market-based approaches, as well as collaborative initiatives that bring together different stakeholders to develop shared solutions.²⁸² While accountability mechanisms²⁸³ can help to align corporate behaviour with the interests of future generations, they are not a substitute for more fundamental reforms to the purpose and structure of the corporation itself.²⁸⁴ Ultimately, the goal of corporate law should be to create a corporate sector that is accountable to future generations.²⁸⁵ As Villiers put it, ‘until a stronger counterweight to corporate power, including hard and soft law reform, is established, corporations will continue to profit whilst the global poor and oppressed suffer’.²⁸⁶

5. Challenges and Opportunities

Integrating intergenerational equity into UK company law presents both challenges and opportunities. One significant challenge is the difficulty of balancing the interests of current and future generations, particularly when those interests may conflict.²⁸⁷ Additionally, there may be resistance from corporate actors who are accustomed to prioritising short-term financial gains over long-term sustainability.²⁸⁸ However, the intergenerational equity approach also presents significant opportunities for promoting corporate social responsibility and long-term value creation.²⁸⁹ By prioritising long-term sustainability and the interests of future generations, companies can build long-term trust with stakeholders, enhance their reputation, and create a more stable and resilient business model.²⁹⁰ Moreover, integrating intergenerational equity into UK company law can help to address pressing social and environmental challenges such as climate change and inequality.²⁹¹

There are also pragmatic reasons to embrace intergenerational equity. Companies that prioritise short-term profits over long-term sustainability are exposing themselves to financial, legal, and reputational risks.²⁹² The growing climate litigation trend, seen in cases such as *Milieudefensie v Royal Dutch Shell*,²⁹³ shows how companies may be held legally accountable for environmental harms. In this landmark Dutch case, the Hague District Court in 2021 ordered Shell to reduce its global carbon emissions, finding the company had a duty of care to prevent climate harms. However, in a recent

²⁸⁰ On the complexities arising in an international law context, see Humphreys (n 253) 1064-1066.

²⁸¹ Chloe Ghoogassian, ‘Evading the Transparency Tragedy: The Legal Enforcement of Corporate Sustainability Reporting’ (2015) 11 Hastings Business Law Journal 361, 383.

²⁸² Villiers, ‘Global Supply Chains’ (n 65) 564-565.

²⁸³ See e.g. Cheong (n 70).

²⁸⁴ See e.g. Ben Chester Cheong, ‘A Rethink of Corporate Limited Liability to Promote the Corporate Purpose of Sustainable Value Creation’ (2023) 34 International Company and Commercial Law Review 351.

²⁸⁵ Sjäffell (n 149) p 5.

²⁸⁶ Charlotte Villiers, ‘A game of cat and mouse: Human rights protection and the problem of corporate law and power’ (2023) 36 Leiden Journal of International Law 415, 416.

²⁸⁷ Slobodian (n 100) 588.

²⁸⁸ Rodrigo Lozano, ‘Resistance to Sustainability Change in Organisations and Strategies to Overcome It’ in *Organisation Change Management for Sustainability* (Springer 2024).

²⁸⁹ Sam Sarpong, ‘Intertemporal trade-offs to safeguard intergenerational equity: the role of business in sustainability issues’ in Samuel O Idowu and Liangron Zu (eds), *The Elgar Companion to Corporate Social Responsibility and the Sustainable Development Goals* (Edward Elgar 2023).

²⁹⁰ Alice Klettner and others, ‘The Governance of Corporate Sustainability: Empirical Insights into the Development, Leadership and Implementation of Responsible Business Strategy’ (2014) 122 Journal of Business Ethics 145, 147-149.

²⁹¹ Cynthia A Williams, ‘Corporate Social Responsibility and Corporate Governance’ in Jeffrey N Gordon and Wolf-Georg Ringe (eds), *The Oxford Handbook of Corporate Law and Governance* (OUP 2018) 676-677.

²⁹² *ibid* 669-670.

²⁹³ *Milieudefensie v Royal Dutch Shell*, Hague District Court, 26 May 2021, ECLI:NL:RBDHA:2021:5339.

development, the Hague Court of Appeal overturned key aspects of the District Court's decision in November 2024.

As Lin notes in her analysis, the Court of Appeal 'unequivocally affirms that companies have a legal obligation to reduce CO2 emissions to combat dangerous climate change'.²⁹⁴ The court stressed that 'especially companies whose products have contributed to the creation of the climate problem and have it in their power to contribute to combating it are obliged to do so vis-à-vis other inhabitants of the earth, even when (public law) rules do not necessarily compel them to do so'.²⁹⁵ Importantly, the court also affirmed that 'protection from dangerous climate change is a human right'²⁹⁶ and that human rights obligations 'can have an impact on private law relationships by giving substance to open standards, such as the social standard of care'.²⁹⁷ However, the Court of Appeal rejected imposing a specific emissions reduction target on Shell, finding insufficient scientific consensus to derive a precise target for an individual company.²⁹⁸ As Van Asselt and Savaresi point out, 'While the ruling on Shell's appeal might undermine other lawsuits asking courts to set company-specific emission reduction targets, the affirmation by the appeals court of a general obligation for companies to reduce emissions offers plenty of room for further litigation against companies'.²⁹⁹ Although the Court of Appeal rejected imposing a precise emissions target on Shell, its clear articulation of a corporate duty to mitigate climate change leaves the door open for future cases to further define the scope of this responsibility. The *Shell* decision thus represents an important incremental step in the broader quest to hold companies legally accountable for their contributions to climate change.

Investors and society are increasingly expecting companies to operate responsibly and ethically. Companies that proactively address sustainability challenges can secure enduring competitive advantages.³⁰⁰ Other areas of law, such as environmental and human rights law, have recognised duties to future generations.³⁰¹ Constitutional and international laws enshrine sustainable development principles.³⁰² It is anomalous and problematic for company law to ignore intergenerational equity. Moreover, by fostering a more long-term and inclusive approach to value creation, the intergenerational equity approach can help to build a more resilient and adaptable corporate sector that is better equipped to navigate the complex challenges and opportunities of the 21st century. It can encourage innovation, collaboration, and strategic foresight, and help to unlock new sources of competitive advantage and sustainable growth.³⁰³

6. Conclusion

The integration of intergenerational equity principles into corporate law is a crucial step towards addressing the urgent intergenerational equity challenges facing our world today. By recognising the duties owed by corporations to both current and future stakeholders, corporate law can promote a more long-term and sustainable approach to business practices. The justifications for this approach are compelling, including the need to address environmental concerns, promote long-term corporate

²⁹⁴ Jolene Lin, 'Milieudéfensie et al. v. Shell: Analysis and Commentary of the Hague Court of Appeal's Decision', *NUS Centre for International Law Blog* (18 November 2024).

²⁹⁵ *Milieudéfensie v Royal Dutch Shell*, Court of Appeal The Hague, 12 November 2024, ECLI:NL:GHDHA:2024:2100 (*Milieudéfensie*), English translation [7.26].

²⁹⁶ *ibid* [7.17]

²⁹⁷ *ibid* [7.24]

²⁹⁸ *ibid* [7.111]

²⁹⁹ Harro van Asselt and Annalisa Savaresi, 'Shell's legal victory is disappointing – but this is not the end for corporate climate litigation', *The Conversation* (15 November 2024).

³⁰⁰ Larry Fink, 'A Sense of Purpose' (Harvard Law School Forum on Corporate Governance (17 January 2018), available at: <<https://corpgov.law.harvard.edu/2018/01/17/a-sense-of-purpose/>> accessed 18 May 2024).

³⁰¹ Caroline E Foster, 'Due Regard for Future Generations? The No Harm Rule and Sovereignty in the Advisory Opinions on Climate Change' (2024 advance access) TEL 1, 4-6.

³⁰² See e.g. Future Generations Commissioner for Wales, established under the Well-being of Future Generations (Wales) Act 2015.

³⁰³ Bob Willard, *New Sustainability Advantage: Seven Business Case Benefits of a Triple Bottom Line* (New Society Publishers 2012) 2.

success, and shape corporate culture in a more responsible and future-oriented direction.³⁰⁴ While there are potential criticisms and challenges to the integration of intergenerational equity into corporate law, these concerns can be addressed through a balanced approach that recognises the interdependence of shareholder value and intergenerational equity. By promoting a more long-term and stakeholder-oriented approach to corporate governance, the integration of intergenerational equity principles can ultimately benefit both corporations and society as a whole.³⁰⁵ As the world faces increasingly urgent environmental and social challenges, it is essential that corporate law adapts to promote a more equitable future for all. Further research is imperative to operationalise such a framework within company law, necessitating substantial and potentially radical alterations to the corporate form.³⁰⁶

³⁰⁴ Sjäffjell, 'Redefining the Corporation' (n 21) 37-40.

³⁰⁵ Lynn A Stout, 'The Toxic Side Effects of Shareholder Primacy' (2013) 161 *University of Pennsylvania Law Review* 2003, 2016-2019.

³⁰⁶ See e.g. Cheong (n 284).