

# ESG: Not as easy as ABC

The explosion of interest in ESG issues has become a “phenomenon” which is revolutionising the way that businesses and organisations operate.

This laser focus on ESG (Environmental, Social and Governance) goals offers opportunities and creates challenges, which were both discussed at a panel discussion hosted by the CMS ESG Focus Group.

Environmental lawyer Pamela Turok of CMS, who hosted the discussion, said: *“I have never seen anything quite like the ESG phenomenon in my years of practising environmental law. The landscape has changed hugely.”*

Caroline Barr, Head of Sustainability Expertise for the UK at Dutch bank ABN AMRO, said ESG now permeated all aspects of an organisation: *“It was originally about compliance, but it is now a key market driver which informs the strategy of most large organisations.”*

## The ‘S’ word has come to the fore

Catriona Aldridge, Employment Partner at CMS, said the ‘S’ for Social in ESG was increasingly significant, with a stronger focus from a range of stakeholders on factors such as good working practices and DEIB. She also saw a strong trend of the ‘S’ and ‘E’ merging, as organisations strived to bring employees with them on their journey towards greater sustainability.

Mike Gettinby, Chief Legal Officer at the University of St Andrews, said the social aspects of ESG were “baked in” to the way the University operated - and stressed that he also saw a convergence of the social and environmental aspects of ESG.

*“ESG is where the research money and academic interest is, so it’s just what we do,”* he said. He talked about a subsidised bus travel scheme for all staff and students at the university. The costs were significant, but the rewards were high.

## Pressure for change is increasing

Mike Gettinby said students at St Andrews University were exerting strong pressure on the University to demonstrate a clear commitment to positive environmental and social goals.

Catriona Aldridge said pressure was also being brought to bear by employees - urging businesses and organisations to be proactive. One way of demonstrating action and potentially progress under the S was to publish a gender pay gap report and action plan (even if a company or organisation is below the threshold where it is legally obliged to do this) - then go further by looking at, for example, ethnicity and disability pay gaps too.

*“People want to work for organisations with a positive culture, good working practices and strong environmental credentials - and it’s not just the younger generation,”* she said - adding that taking clear and meaningful steps could really help with attracting and retaining talent.

## Regulatory risk is more focused on people and the planet

On the risk side of ESG, Caroline Barr summarised the risks as regulatory, reputational and physical. She said an example of physical risk were the severe floods affecting Spain.

In terms of regulation, she said the focus was shifting towards nature-based and human rights risks, citing the growth of the Taskforce on Nature-related Financial Disclosures (TNFD) - a global initiative offering *"recommendations and guidance to enable businesses and finance to integrate nature into decision-making"*. The uptake of TNFD has been strongest in Japan, with the UK second - and this interest reflects the challenges faced by investors in understanding the impacts of an industry on nature, especially across whole ecosystems.

## Reputational risk is rising

Caroline Barr highlighted the growing significance of the European Corporate Sustainability Due Diligence Directive and similar efforts globally, which aim to foster sustainable and responsible corporate behaviour in companies' global operations. She described this as *"a risk which will become a requirement"* and stressed that organisations must look closely at value chains as well as their own operations.

Catriona Aldridge raised the huge reputational damage that can come if revelations about the treatment of workers become public, not to mention the legal claims and associated cost and possible shareholder challenges.

The recent flurry of Section 23 agreements, whereby a number of high street brands have been signed up to contracts with the Equality and Human Rights Commission committing to address sexual harassment of workers, was also mentioned, while Stephanie Smith, Managing Lawyer, Rewilding Law, for the The Lifescape Project, highlighted the growing number of legal cases relating to greenwashing. She said about 70% of cases brought were successful, so this represented a very significant risk. *"Companies need to focus on getting it right from the very start,"* she said.

## Laws and regulation are lagging behind innovation

Stephanie Smith said Scotland has the opportunity to be the rewilding poster girl/boy for the UK, because it has large open spaces and landowners who are willing to be innovative.

While rewilding projects require long-term funding and commitment, there are creative and innovative approaches to investment that can monetise rewilding and protect a specific area of land. Even small areas of land can make a big impact if they can be selected strategically to connect ecosystems.

However, Stephanie Smith said that laws are *"not there at the moment for those who want to do something new and innovative"*.

There was a discussion about where pressure for change was coming from, with a sense that regulation and legislation was lagging behind the rapid change in the ESG world. This created a vacuum which investors were trying to fill - by insisting on clauses in contracts aimed at driving change and reducing risk. However, these clauses could be poor-quality (sometimes as a result of a lack of robust data and measurement mechanisms behind them) and this was leading to more disputes.



## The road ahead isn't easy

With the latest data showing global temperatures are likely to rise beyond the 1.5 degrees seen as the tipping-point for greater climate challenges, the phenomenon of ESG is only going to intensify. The panellists were asked where they saw the agenda moving in the next decade.

Caroline Barr said: *"If you accept that temperatures are still rising and that the climate will become more volatile, we need to look more at adaptation finance. How do we future-proof? We will need more collaboration between the public and private sectors to help scale-up and de-risk investments to make them viable."*

Mike Gettinby said that lots of *"big stuff"* had been done, and that there was hard and costly work ahead to push the ESG agenda forward - and the high costs could be off-putting to some.

Catriona Aldridge warned of increasingly challenging issues when positive environmental and social agendas didn't work together. She said: *"Most employees are on board in terms of their organisations becoming more environmentally-friendly but what if, for example, that means taking away a fuel benefit that is really important to employees? Do you prioritise the green agenda or the people agenda? I see more clashes coming."*

## Key contacts



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