Directors deliver - just not very much: further reflections on s.172 of the Companies Act 2006

Nicholas Grier

This is a pre-copyedited, author-produced version of an article accepted for publication in Juridical Review following peer review. The definitive published version

Grier, N. (2022) 'Directors deliver - just not very much: further reflections on section 172 of the Companies Act 2006'. *Juridical Review*, 2022(4): pp.212-221.

is available online on Westlaw UK.

Directors deliver – just not very much: further reflections on s.172 of the Companies Act 2006.

Nicholas Grier

Eight years ago I published an article on enlightened shareholder value and the operation of s.172(1) of the Companies Act 2006. I wondered if directors had, in the quest for enlightened shareholder value, promoted the success of their companies by having regard to various stakeholders when making their directorial decisions?[1] I examined the annual reports of various listed companies, particularly UK banks, that had, on the face of it, not had much regard for their stakeholders in the period between the implementation of the Act and the date of publication of my article (2014). Despite the requirements of the Act, these companies had failed to have regard to the interests of customers, to consider the long term effect of their decisions, or to pay attention to the need to uphold high standards of business conduct (all matters mentioned in s.172(1)) - each of which failures had cost the companies money or adversely affected their share prices. The directors of the banks in question had persisted in selling their customers unnecessary and useless payment protection insurance policies, failed to prevent money-laundering taking place, lost much money on sub-prime lending, embarked on risky takeovers, and showed poor corporate governance.

Not only was their behaviour deplorable, in the long run it was self-defeating. The banks eventually had to repay large sums to the policy-holders[2] and to pay fines for permitting money-laundering.[3] Yet at the time, few, least of all the directors, had queried the sale of the policies or worried about the money-laundering, while shareholders had enjoyed the dividends. It was very much a question of enjoying the money today, and letting others sort out the problems later. No-one paused to consider whether persuading customers to buy useless products was a responsible thing to do, or wondered if there ever might be a consumer backlash. At the time, bank employees were encouraged to compete with each other to sell as much as possible to their customers in order to drive up banks' profits and everyone's bonuses. The more policies sold, the bigger the bonus. It would be a brave member of staff who defied head office instructions to sell as much as possible. The fines and penalties that consequentially arose were seen as a cost of running a large business. As for good corporate governance, in the heyday of Fred Goodwin's management of Royal Bank of Scotland plc, it was a brave director who dared query Goodwin's judgement or decisions, least of all the takeover of AMRO.

What did the companies' annual reports say about their bad behaviour? The answer was this: not very much. The companies generally restated their policies of adhering to all necessary statutory requirements and played down the extent to which they had fallen short. All this was explained in my article referred to earlier. It seems unlikely that directors of the banks in question and the other companies referred to in the article would not have known of s.172,

---

[1] *Enlightened Shareholder Value: Did Directors Deliver?* 2014 2 Juridical Review 95.

[2] According to the Observer and the New City Agenda, the total income to banks from premiums was £44bn, generating at the time £21B or profits, but resulting in fines and handling charges of £53.3bn. See Sean Farrell in the Observer on 27 October 2019.

[3] HSBC received a fine of £63.9m from the FCA for money-laundering between 2010-18. BBC news 17 December 2021 https://www.bbc.co.uk/news/business-59689581.

since it would be the job of each company secretary to tell them, but it did not look as though the directors paid s.172 much attention. They had paid it lip-service but no more.

Back in 2014, s.172 was not working particularly well. There was sufficient concern about its ineffectuality that a question was asked in Parliament in 2012 about the promotion of the observance of s.172.[4] The then Under-Secretary of State for Business Innovation and Skills, Norman Lamb, stated, "I can confirm that the duty in section 172 is absolutely clear. The evidence of surveys shows that the duty is well understood, and it is important that directors abide by it." While it is true that at least one survey did show that the duty was well understood,[5] what the Minister did not address was the point that the duty was not necessarily being observed.

Having regard

The good news is that the duty works well for responsible directors. Indeed, research carried out by Keay and Iqbal on a number of listed companies suggested that responsible directors of responsible companies did more or less do what s.172 recommended as part of the pursuit of enlightened shareholder value, and indeed were doing so even before the introduction of s.172.[6] While directors may have varied on how they went about this, s.172 was taken seriously. This is not to say that s.172 is trouble-free. The first problem is that the duty is only to "have regard". This, along with the similar phrase, "take account of", is a phrase that is hard to pin down. If someone has to "have regard" to some matter before making a decision, that person will do more than give it a nod before moving on. But equally, that person not need to treat the matter as a deal-breaker. If having had regard to some matter, that person decided to do something contrary to the interests of that matter, he could still legimately say that he had had regard to the matter. And as far as the courts are concerned, that is probably all he has to do. The cynical trick is to ensure that the wording of any board minutes, and the accompanying documentation presented to directors to read before any board meeting, show that the directors duly "had regard" to each relevant stakeholder, even if the directors then proceeded to do something completely antithetical to any particular stakeholder's interests. There is no heirarchy of interests, and the courts are not going to second-guess commercial decisions taken by the directors. All that matters is that regard to the relevant stakeholder has been had. There is no indication of how much regard has to have been had, as long as there has been some.

The duty owed under s.172 is only owed to the company – and who controls the company?

The second aspect of the duty to have regard to the interest of the various stakeholders mentioned in s.172 is that it is a duty owed under s.170(1) to the company and not to the actual stakeholders. The stakeholders are in no position to persuade the members to take action

---

[4] See Hansard, House of Commons, 15 March 2012.

[5] S Fettiplace and R Addis, "Evaluation of the Companies Act 2006," 2 August 2010, p 62 and accessible at: <http://webarchive.nationalarchives.gov.uk/20121205013304/http://www.bis.gov.uk/assets/BISCore/businesslaw/docs/E/10-1360-evaluation-companies-act-2006-volume-1.pdf >

[6] Keay, AR and Iqbal, T, *The Impact of Enlightened Shareholder Value.* Journal of Business Law, 2019 (4). pp. 304-327.

against the directors for the directors' failure to have regard to the stakeholders' interests – except perhaps where the members are stakeholders in some other capacity, such as being employees in an employee-owned company, or customers. The only ones who can put pressure on the directors for the directors' failure to have regard to the stakeholders are the collective body of members. This is unlikely to happen because the nicer the company is to the stakeholders, the lower the dividends for the members. Unless the members are particularly altruistic, or keen on the concept of enlightened shareholder value, the members may be little concerned about the stakeholders. Nevertheless there may be companies where there are members who believe that the directors are failing to have regard to the interest of the stakeholders. What can they do about it?

This raises the issue who controls the company. If the majority of the members are the same people as the directors, or the directors by some other means, such as weighted voting, are the controlling shareholders, the members who support the stakeholders are not in a position to force the company to take action against the directors, as in *Foss v Harbottle*. It is for the company to raise proceedings against the directors, and not merely the stakeholder-supporting members.[7]

What then happens? The stakeholder-supporting members could sell their shares and leave the problem behind them. They could make a fuss at the next AGM. They could accept that they are outvoted. They could, potentially, provided the company was solvent, apply for a just and equitable winding-up of the company under s.122(1)(f) of the Insolvency Act 1986, though that would be an extreme course of action with no guarantee of success. They could, at a stretch, possibly say that they were the victims of unfairly prejudicial conduct on the part of the controlling shareholders, under s.994 of the Companies Act 2006. This would be their weakest suit.

The derivative claim for breach of duty by a director

Instead they could use the derivative claim under ss.260-264 of the Companies Act 2006, or the equivalent derivative proceedings in Scotland.[8] This claim allows a member to apply to court to represent the company in an action against directors where the company, for some reason, will not do so itself. This may only be done where the applicant asserts that the directors have carried out or omitted to carry out any action involving negligence, default, breach of duty or breach of trust by a director of the company. This could include breach of duty to have promoted the success of the company by failing to have regard to the various stakeholders. This is a laborious and high risk process for the applicant. The applicant needs to be determined, well informed about the company and the directors' actions, prepared to take the risk that his application fails, (perhaps because the act or omission is authorised or ratified by the other members) and prepared to pay the court costs if he loses. If he wins the application, the company should bear his costs anyway. Back in 2006 the whole process was seen as complex and baffling. For a long time, there were very few reported cases while lawyers struggled to understand the legislation relating to derivative claims, or, alternatively, were insufficiently

[7] *Prudential Assurance Co Ltd v Newman Industries Ltd* (No 2) [1982] Ch 204.
[8] Ss.265-269.

sure of the standing of s.172 to make an issue of it. Now, 16 years later, there have been cases where an applicant not only obtained leave to bring a derivative claim, but also went on, now wearing his company's hat, to make a successful claim against a director who had breached his duty.[9] As lawyers are becoming more familiar with the legislation and the practicalities of its operation, derivative claims are becoming less daunting. The point of the derivative claim is that it is a weapon in the hands of a determined applicant member who believes that directors have not been promoting the success of the company under s.172: this could include the directors' failure to have regard to the interests of the various stakeholders mentioned in s.172. If the applicant member is ultimately successful, the targeted directors will have to pay damages to the company to reflect the extent of the loss, or remedy the fault that their actions or omissions caused the company. In theory, this should place the company in the position it would have been had the directors not breached their duty. What the derivative claim will not do is benefit the applicant member directly. He may have the satisfaction of achieving a desirable outcome for the company, (or as the case may be, a hitherto unregarded stakeholder) but if the directors do ultimately pay damages to the company equivalent in value to the harm (or remediate that harm) that the directors had caused the company by the failure to have the due regard, the company's share price should be restored to what it should have been had the directors done their job properly, and the company's ability to pay dividends should be enhanced. In practice this desirable result may not always be achieved, either because the directors are not in a position to pay the damages ore remediate the harm, or because, particularly in a listed company, there are so many other factors that can affect a share price or dividends that damages being paid by a director probably makes no difference anyway.[10] There is also the difficult point that calculating the damages owed to the company as a result of the failure to have regard to any particular stakeholder might be a well-nigh impossible task. How exactly would one assess the financial cost to a company of, say, failing to foster the company's relationships with suppliers, customers and others?

Breach of duty by a director and insolvency

When a company has been wound up, liquidators appear to be willing to point to failures on directors' parts to have regard to s.172 as being grounds for misfeasance under s.212 of the Insolvency Act 1986.[11]

Having said this, it is worth noting that in the small number of reported cases involving derivative claims and referring to s.172, or misfeasance and s.172, the main duty that the directors tend to breach is not the need to have had regard to stakeholder interests, but the need to promote the success of the company. The directors, broadly speaking, were breaching their fiduciary duties to the company, had undisclosed conflicts of interest, or were not very competent businessmen. In other words, having regard to the interest of stakeholders was not

[9] For example, under the Scottish procedure, *ICU (Europe) Ltd v Ibrahim* [2020] SAC (Civ) 20.
[10] The extent to which the payment of damages would affect the share price and dividends is discussed in *Sevilleja* v *Marex Financial Ltd* [2020] UKSC 31.
[11] For example, *Re Pantiles Investments Ltd* (In Liquidation), [2019] EWHC 1298 (Ch) and *Re TMG Brokers Ltd* (In Liquidation), [2021] EWHC 1006 (Ch).

the major concern of applicants seeking leave to bring derivative claims or of liquidators seeking to make directors liable under s.212 of the Insolvency Act 1986.

Corporate scandals illuminate the law

What has helped raised the profile of s.172 over the last few years has been, as is usual in company law, a corporate scandal or two. For example, although BHS had been a profitable company, its corporate governance was poor and dominated by Sir Philip Green. His wife and companies associated with her, the Taveta Group, which owned all the shares in BHS, had received substantial dividends arising from Green's cost-cutting and asset sales, which in the long term weakened BHS relative to its competitors, and caused its ultimate collapse. What was particularly notable about its collapse was the failure of the directors to fund the employees' pension fund properly.[12] Another example is Carillion plc. It had been poorly managed, used aggressive accounting techniques, was slow to pay creditors, and, because some clients were unhappy with the quality of the work Carillion carried out, desperate for cash. On top of all this, its auditors were incompetent.[13] Whatever else one may say about the directors of these two companies, it is not evident, at least to outsiders, that their requirement to have regard to stakeholders in terms of s.172(1) was a paramount concern for them.

As a result of these and other high-profile collapses, the Companies (Miscellaneous Reporting) Regulations 2018[14] introduced ss.414C and 414CZA to the Companies Act. This required companies other than small companies to prepare a strategic report including a s.172(1) statement which describes how the directors have had regard to the matters set out in s.172(1)(a)-(f) when performing their duty under s.172. There was considerable scepticism in the House of Lords as to whether these provisions would make any difference,[15] but the regulations were approved anyway.[16] Something had to be seen to have been done about s.172, and in the absence of any better idea, this was what Parliament approved. Companies are now obliged to provide such statements in their annual reports. They are usually anodyne, carefully drafted, indicate compliance with the statutory requirements, and, as with much of the information that is obliged to be included in annual reports, little read by the members for whom they have been written. This is not to say that such statements should not be included, but one should be realistic about their usefulness. It is unlikely that had the provisions been in force at the time that Sir Philip Green was running BHS the provisions would have made any difference, as the Taveta group owned or controlled most of the shares in BHS, and as stated earlier, the duty in s.172 to have regard to the stakeholders is owed to the company. If the

---

[12] House of Commons, Work and Pensions and Business, Innovation and Skills Committees: BHS First Report of the Work and Pensions Committee and Fourth Report of the Business, Innovation and Skills Committee of Session 2016-17 HC 54.

[13] See House of Commons Briefing Paper, *The Collapse of Carillion* Number 8206, 14 March 2018.

[14] 2018/860 Pt 2 reg.4

[15] Baroness Bowles of Berkhamstead said "These regulations are a decent attempt to remedy the fact that the 'have regard to' formulation is weak, to the point of being non-existent."

[16] See Hansard, House of Lords, 7 Sept 2018. Other legislation to a slightly similar effect is to be found in reg. 40(3)(o) of the Charities (Accounts and Reports) Regulations 2008 (SI 2008/629) and reg. 2(3)(b)(vi) of the Occupational Pension Schemes (Investment) Regulations 2005 (SI 2005/3378).

company's members are untroubled by the directors' failure to have regard to the stakeholders, there is little anyone else can do about it.

It is always easy to criticise unsatisfactory wording in legislation. As I explained in my previous article, the wording of s.172 was a fudge, and was possibly not wholly understood by the MPs voting on it. But if it is not satisfactory, what should replace it? Or should we leave it as it is, knowing that it is a bit unsatisfactory?[17]

How might s.172 be improved?

There have been various suggestions as to how s.172 should be improved, not the least of which is that there should be a requirement for directors to have regard to the environmental consequences of any decision particularly in the context of sustainability, pollution and global warming.[18] This is not just a UK problem. All developed countries are going to have to grapple with these difficulties. Sometimes they are being addressed in soft law, as in voluntary codes or statements of intent at high level, such as the American Business Roundtable statement of 19 August 2019.[19] Recently there has been the Supreme Court case of *BTI 2014 LLC* v *Sequana SA and others*[20] which explicitly dealt with the problem of directors declaring a dividend which, in the long run, diminished the later insolvent company's ability to meet certain indemnity payments required for environmental clean-up costs in the USA, and therefore was a breach of s.172(3) (the duty to consider or act in the interests of creditors). While on this occasion the directors were exonerated on the basis that at the time the directors made their decision the company was solvent, we can be sure that over the coming years, as the reality of net zero, climate change and pollution impacts on policy-makers, and as climate-change-denying becomes more of a minority pursuit, the law is going to be tipped more in favour of companies being expected to act more responsibly than at present when it comes to environmental matters. Directors may be expected to take account of long-term contingencies in ways that are not at the moment required. Insurance policies may have to be of longer duration, and possibly the law relating to prescription may need to be reconsidered. But this is for the future, and not within the scope of this article.

How do other countries deal with the equivalent of s.172?

When considering improvements to legislation it is always instructive to see how other jurisdictions deal with the same problem. Frequently they have exactly the same difficulties and the same inability to come up with a perfect solution. It is worth looking at the equivalent legislation in Canada in the Canada Business Corporation Act 1985:

[17] There is also the practical question of whether Parliamentary time would ever be found for an issue that may not be, at least in MPs' minds, particularly pressing.

[18] For example, Katrina Muscat, *Shareholder primacy over planetary security: how the Companies Act 2006 fails to bring about corporate action in the face of climate change* D.L. Rev. 2020, 5, 190-234. The group known as the Coalition also propose a Better Business Act, agitating for change to s.172 to reflect environmental and other concerns (see https://betterbusinessact.org/).

[19] Visible at https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

[20] [2022] UKSC 25.

Duty of care of directors and officers

- **122 (1)** Every director and officer of a corporation in exercising their powers and discharging their duties shall
  - **(a)** act honestly and in good faith with a view to the best interests of the corporation; and
  - **(b)** exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

  (1.1) When acting with a view to the best interests of the corporation under paragraph (1)(a), the directors and officers of the corporation may consider, but are not limited to, the following factors:

  - **(a)** the interests of
    - **(i)** shareholders,
    - **(ii)** employees,
    - **(iii)** retirees and pensioners,
    - **(iv)** creditors,
    - **(v)** consumers, and
    - **(vi)** governments;
  - **(b)** the environment; and
  - **(c)** the long-term interests of the corporation.

  (2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

  (3) Subject to subsection 146(5), no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves them from liability for a breach thereof.

Subsection (1.1) was added in 2019, and shows much similarity to the UK wording. Instead of the requirement to "have regard", Canadian directors "may consider". Interestingly, Canadian directors are expected to act honestly, something not expected of UK directors, though it is expected of Irish directors, who not only are expected to act honestly but also responsibly.[21] Where s.170(1) of the UK Companies Act 2006 spells out that the directors' general duties are owed to the company, and only to the company, the Canadian Act leaves the matter silent, it being implicit that the duty of care is owed to the corporation alone. But the point is that the Canadians appear to have the same desire to have an inclusive Act as the UK, but the same problem in that the duty is owed to the company and not to the various stakeholders mentioned

[21] Companies Act 2014 s.288(1)(b).

in the legislation. And this is the sticking-point. Any country that cedes to the stakeholders the right to take action against the directors for the failure to consider the stakeholders' interests is immediately likely to watch its leading companies (and their directors) take their businesses to a more director-friendly jurisdiction. Furthermore, the companies that did stay in that country could expect to be charged much higher directors' and officers' insurance premiums because of the risk of the stakeholders suing the directors. That cost would need to be passed on to customers. It would effectively remove from directors the protection of the corporate veil. At the moment no country appears willing to take that risk to its economy.

It does not appear that the Canadian codification of directors' duties is markedly different in effect from the UK one. One of the reasons that the Canadians introduced subsection (1.1) was because of the scandal in 2015 associated with a Canadian-based company, Valeant.[22] Valeant sold pharmaceutical products and indulged in price-gouging, inflating sales, and other questionable practices in the USA, all as intructed by the company's directors.[23] Another reason is because of the Canadian Supreme Court case of *BCE v. 1976 Debentureholders*,[24] which, while overall expecting fair treatment by directors of stakeholders, requires directors to act in the best interests of the corporation, "viewed as a good corporate citizen".[25] Subsection (1.1) is effectively a codification of the requirements of directors as discussed in that case. It remains to be seen whether Canadian company directors take this legislation to heart, or, as may be more likely, it works well for responsible directors and is quietly ignored by irresponsible ones.

Being a good corporate citizen

Being a good corporate citizen has its own challenges. If one follows the shareholder supremacy approach to corporate law, everything that the directors do should ultimately be for the benefit of the shareholders. It therefore makes sense to reduce the company's liability to tax in any legal way that is permissible, and if that means exploiting tax loopholes or taking advantages of other countries' lower rates of tax, so be it. The American–run companies Google, Apple and Amazon have all been challenged on this matter, to which their response is broadly that it is for governments to sort out any deficiencies in their taxation laws, and until this is done, it is perfectly reasonable for these companies to take advantage of such tax arbitrage as they can. On the other hand, aggressively taking advantage of every legal tax swerve is not exactly being a good corporate citizen. During the Covid crisis the UK Government provided many businesses with funds to keep their employees in work, such sums being known as furlough. To begin with many businesses saw this as free money, until it dawned on some of them that to be using taxpayers' money to pay dividends, or where the business's owners were famously wealthy, did not present a good public image. On the other hand, some companies had initially no compunction about taking the furlough money even

[22] This demonstrates the point made earlier that company law reform is often triggered by corporate scandal.
[23] For an overview of Valeant's activities, see https://www.nationalobserver.com/2015/12/14/news/canadas-sleaziest-corporate-scandal.
[24] 2008 SCC 69 (CanLII), [2008] 3 SCR 56.
[25] At 66.

when it was not needed.[26] And why not? It is certainly arguable that directors of such companies could be accused of not promoting the success of the company if they did not accept the Government's furlough money.

The difficulty at the heart of s.172 is that while it is well-intentioned, and few could genuinely object to its principles, its enforceability is low. For small companies where the directors are the shareholders, there is little danger of a derivative claim unless the share-ownership changes. There is the danger that the company goes into liquidation and the liquidator looks at the directors' misfeasance under s.212 of the Insolvency Act, but this is only worth worrying about where there are substantial sums of money at stake and the directors worth suing. As for larger companies, directors are always having to make hard decisions which will upset some stakeholders, and at least so far, the presence of s.172 on the statute book does not appear to have held some directors back from making unwise or self-seeking decisions. What s.172 does is bring moral weight to bear on directors, but, as has been recently seen in politics as well as in business, some leaders' personal moral compass is limited. The concept of "right and wrong" is not always one to trouble them. At the same time, s.172 works perfectly well for the sort of person for whom it would work perfectly well.

Testing the limits of s.172

In the course of this year, the limits of s.172 will be tested by ClientEarth, an environmental organisation and shareholder in Shell. ClientEarth is proposing to bring a derivative claim against thirteen directors of Shell for their alleged failure to produce or bring into operation a a strategy for the company's adherence to the Paris Climate Agreement or to prepare for net zero transition.[27] It is not possible to predict the outcome of such a claim, but if what is required under s.172 is for directors to have regard to the environment, it would be surprising indeed if the directors of Shell had not had regard to the environment. Their decision, having had that regard, may not have been welcome to environmentalists, and may or may not be good for the planet – but as matter of law, it may have been sufficient. This remains to be seen. Even if ClientEarth loses on this occasion, this will be the first of many such cases, not just in the UK, but throughout the developed world. S.172 is merely a weapon in ClientEarth's hands. It will be one of those cases with enormous ramifications: if the directors are found liable for breach of their duties, what happens next? Are they required to reconsider their decisions? Do they pay damages to the company, and to what use should those damages be applied? Who would want in future to be a director of Shell unless backed by sturdy insurance cover? At a time of inflation, by how much further will Shell have to put up the cost to consumers of its products in order to cope with the transition to net-zero? Why should Shell bother to have any presence in the UK if it can be sued so easily by stakeholders? Why should any other major company stay within the UK for the same reason?

---

[26] For example. Ladbrokes plc claimed £102 m by way of furlough funds despite healthy profits. After an outcry, it repaid £44m. See https://www.theguardian.com/business/2022/jan/07/ladbrokes-claimed-1015m-furlough-money-despite-online-profits.

[27] For details, see https://www.clientearth.org/latest/latest-updates/news/we-re-taking-legal-action-against-shell-s-board-for-mismanaging-climate-risk/.

But equally, if the directors are not found liable, while it does show that stakeholders cannot sue the company, it suggests that directors may safely be able to ignore widely valued environmental initiatives. It may be that the real victim of this case is not the environment, nor the directors, but the wording of s.172. The fault-line at the heart of s.172, that directors' duties are ultimately owed to the company, will be held up for all to see.

Conclusion

As with many pieces of benevolent legislation, s.172 will never really achieve as much as its promoters hoped. It is a wholly worthy and genuinely well-intentioned piece of legislation. But it is also an attempt to impose compulsory benevolence on business, or to put it another way, it is trying to make directors into nice people. The Government's own explanatory notes to s.172 say that having regard to the various interests in s.172 should not be a "tick-box" exercise, as if conceding in advance that Government is well aware that that is exactly what will happen. Of course most directors will take s.172 seriously. They are not the directors we need to worry about. It is the directors who routinely ignore s.172 that are the problem. It is unrealistic to think that all directors will ever take s.172 to heart and act on it. Legislation cannot eradicate greed, selfishness or irresponsibility: at best it can nudge some directors to be less greedy, selfish or irresponsible. For comparative lawyers, or students having to write essays on this subject, the plain fact is that no business-friendly government would allow its country's company directors to be easily sued by stakeholders. S.172 will continue to work well for those who would have wished to work with it, and may make some other directors pause for thought. Other countries may copy it if they wish, but they would be wise to have low expectations of the benefit of doing so.

Nicholas Grier, Professor of Commercial Law, Abertay University