Fossil fuel divestment, directors' duties, and derivative claims: *McGaughey and Davies v. USS Ltd and its directors*

A Climate Change Laws of the World insight

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Fossil fuel divestment, directors' duties, and derivative claims: *McGaughey and Davies v. USS Ltd and its Directors*

Introduction

In July 2023, at that time the hottest ever month in human history, the UK Court of Appeal gave judgment in *McGaughey and Davies v. USS Ltd and its Directors* [2023] EWCA Civ 873. My colleague, Prof Neil Davies, and I had undertaken the largest crowdfunded drive in the UK so far, to sue the board of directors personally to reverse (the roughly) 30% cuts to defined benefit pensions, and to require the UK's biggest pension fund, the Universities Superannuation Scheme (USS), to divest its fossil fuels assets.

Out of court, after the Truss mini-budget, years of strikes, and shortly after we got leave to the Court of Appeal, USS capitulated: the CEO announced his resignation, and USS declared it would reverse the pension cuts. Despite this victory, we went on to lose in the Court of Appeal, but by then we had already succeeded in most of our goals.[1] The key issue where we had limited success was in fossil fuel divestment.

The focus of this note is why we lost on the fossil fuel claim, but also how the case sets a positive precedent for beneficiaries seeking to uphold directors' duties. Thus it may be instructive for the future wave of litigation against directors complicit in climate damage.

Our claim was the first in the UK to attempt to hold directors personally responsible for exacerbating damage to the climate by bringing a 'derivative claim' under section 171 of the Companies Act 2006 (CA 2006) against USS's directors. We argued that:

- Directors have a duty to follow a company constitution's rules and act for proper purposes
- Improper purposes include wasting a company's money on bad investments
- Gas, oil and coal have been historically the worst performing asset class
- Gas, oil and coal have little or no future if we aim to limit global heating to 1.5°C under the Paris Agreement
- Directors' duties must be interpreted in line with the right to life under the European Convention on Human Rights, which the Paris Agreement upholds.

The Court of Appeal declined to engage with any of these submissions meaningfully, and rejected our claim on procedural grounds. Ostensibly we should have used the procedure of a 'beneficiary derivative claim',[2] not claiming under a 'common law company derivative claim', as we did. Still, valuable lessons may be learned about how to succeed in other cases, to accelerate the end of fossil fuels.

1. The Court of Appeal's reasoning

Professor Davies and I acted as claimants, but in reality we were working *pro bono* on behalf of university staff who wanted to divest from fossil fuels – including 6,000 contributors to the crowdfund, most of whom were also members and beneficiaries of the USS pension, and

[1] The High Court judgment is explained in E McGaughey, 'Holding USS Directors Accountable, and the Start of the End for *Foss v. Harbottle*?' (18 July 2022) Oxford Business Law Blog. The claims were (1) the directors acted for an improper purpose in making cuts, (2) the cuts had a discriminatory impact, particularly based on sex, (3) USS costs had risen disproportionately, so USS should cut their costs, not pensions.

[2] A 'beneficiary derivative claim' is where a beneficiary of a trust brings an action in their own name on behalf of the trust against a third party. See Section 1(a) below on the requirements for a common law company derivative claim.

members of the trade union, UCU.[3] The Court of Appeal had to answer two core questions. First, could beneficiaries of a pension trust (the USS fund), with a corporate trustee (the company, USS Ltd), bring a 'derivative' claim on the company's behalf to enforce directors' duties (did we have 'standing')? Second, could failure to divest from fossil fuels be a breach of the duty to act for proper purposes in CA 2006 section 171 (was there a breach)?

(a) Submissions on standing

The essence of our case was simple: that the beneficiaries fund the entire operation of USS Ltd and the USS fund with their contributions, and their work. Therefore, beneficiaries of a pension corporation have a legitimate interest, and standing to enforce directors' duties in a derivative claim. By contrast, the extraordinary argument advanced by the counsel for USS Ltd and its directors was that we had no standing, even though counsel themselves were ultimately funded by the beneficiaries' savings.

Had we been members in USS Ltd, sections 260 to 263 of the CA 2006 would have applied. This gives members (usually shareholders) a procedural path to sue directors for breach of duty (a statutory derivative claim). To be successful in a statutory derivative claim, we would have needed to demonstrate that:

- Our claim would promote the success of the company: in section 263(2)(a)
- We were acting in good faith, in section 263(3)(a)
- The court pay regard to the views of the members who had no personal interest, in section 263(4).

In our High Court *ex parte* permission hearing, Leech J already accepted that we were acting in good faith – and clearly so, given our aim was to benefit the company and all beneficiaries.[4] But we were not members of USS Ltd. Oddly, under the USS Ltd constitution, only the directors were members. We are beneficiaries of the USS fund. The fund's corporate trustee is USS Ltd. It was unlikely that directors of USS Ltd would sue themselves for breach of duty. Further, in 2019 the directors changed the articles such that only directors could remove directors – not as previously, where university employers or UCU could also revoke director appointments they had made. Thus, statute said nothing about the standing of beneficiaries such as us. Our case lay in common law or equity.

What is the common law or equity position on derivative claims for non-members of companies? Our first argument, based on *Johnson v. Unisys Ltd* [2001] UKHL 13, paragraph [37] (later well-elaborated by Lord Burrows) is that common law and equity should be construed consistently with statute. Courts should not undermine statute. So, we said the same procedural criteria to bring a derivative claim should lie at common law as in section 263.

But which parties (if any) should have standing for derivative claims other than members? The answer, we said, was stated in *Re Fort Gilkicker* [2013] EWHC 348, where a shareholder of a parent company was held to be able to bring a derivative claim against directors of a subsidiary.

Briggs J said:

> [24] 'The would-be claimant is not exercising some right inherent in its membership, but availing itself of the court's readiness to permit someone with a ***sufficient interest*** to sue as the company's representative claimant, for the benefit of all its stakeholders.' (emphasis added)

We said beneficiaries are the focus of the USS Ltd's constitutional object, to provide benefits to 'university teachers or other staff' (Article 71). The effect of this under the CA 2006 sections 172(2), and 263(3)(b) on derivative procedure, is that the company's success must be promoted

[3] See https://www.crowdjustice.com/case/save-pensions-and-planet/

[4] Contrast the later decision in *ClientEarth v. Shell plc* [2023] EWHC 1137, [64] which found a lack of good faith – criticised by Lord Carnwath in '*ClientEarth v. Shell*: What future for derivative claims?' (February 2024), Grantham Research Institute.

for the beneficiaries (not directors). Thus, we said we must have standing in law to claim. Moreover, beneficiaries provided money to the USS trust fund, which in turn wholly funds the corporate trustee. It was essential, we said, that 'one looks at the economic relationships involved': *McDonald v. Horn* [1995] ICR 685, 697G, per Hoffmann LJ (where an action in a pension trust analogous to a derivative claim was allowed). So, both in law and economics, we submitted we had a 'sufficient interest'.

The directors of USS relied on a later, conflicting case, *Abouraya v. Sigmund* [2014] EWHC 277. Here, David Richards J said that to have standing:

> [24] '...all the authorities on derivative actions have taken as a requirement that the alleged wrongdoing should result in a ***loss to the company*** and, hence, an ***indirect or reflective loss to the shareholders*** [or other claimant] and also that the alleged wrongdoers should have ***personally gained*** from their breaches of duty.' (emphasis added)

Both Briggs J and David Richards J have been elevated to the Supreme Court since. We said Briggs J should be preferred. The approach of David Richards J runs contrary to the procedures set in statute for members to bring derivative claims: why should common law claims be more restrictive? This approach suited self-serving negligence claims under section 174, or self-dealing claims in section 177, but would not enable section 171 claims which often involve no loss or gain. It conflated the substance of directors' duties (some involving loss or gain, or neither) with the procedure in derivative claims (which should not require elements of the substance). We also submitted to the Court that David Richards J was simply mistaken about 'all the authorities' supporting his test. For example:

- Derivative claims involving no possibility of loss to the company (or members) include *Industrial Development Consultants v. Cooley* [1972] 1 WLR 443, or *Cook v. Deeks* [1916] 1 AC 554 (now section 175).
- Other exceptions to *Foss v. Harbottle* involving no loss and no personal benefit to directors include the need to follow rules in *Edwards v. Halliwell* [1950] 2 All ER 1064 and restraining *ultra vires* action in *Taylor v. NUM (Derbyshire Area)* [1985] BCLC 237. These cases were analogous to ours, because we were claiming a breach of section 171 (not sections 174 or 177).
- A further case, by analogy to derivative claims, involving no gain or personal benefit was *McDonald v. Horn* [1995] ICR 685, per Hoffmann LJ, where there was '[l]ack of conformity with interim deeds' and 'abuse of powers' (breaches analogous to what is now in section 171).

Our basic point was that common law procedural inventions must not destroy enforcement of statutory rights. We said, as in section 171, 'if a statute gives a right, the common law will give remedy to maintain it': *Ashby v. White* (1703) 92 ER 126, per Holt CJ. David Richards J's hurdles undermined the possibility to enforce important statutory directors' duties. In our view, this was incompatible with the sovereignty of Parliament.

The USS directors' barristers pointed to *Harris v. Microfusion LLP* [2016] EWCA 1212, [29] which had (in another context) approved *Abouraya*, requiring loss, and that a director at least 'further its own ends'. So, we also argued in the alternative, first, that failure to divest from fossil fuels (because it cost money before,[5] and risks much more in future) does cause loss to the beneficiaries of the trust, mirroring loss to the company. When fossil fuels lose money, the pension fund loses money, and the corporate trustee has fewer funds entrusted or available to it.

Second, we contended in the alternative that the directors did 'further their own ends' by continuing fossil fuel investments, over the wishes of beneficiaries. USS commissioned an Ethical Investment Survey in November 2019 but refused to publish the results. We found copies and

[5] See Table 1 below, showing fossil fuels' returns relative to renewable power in the last 10 years globally (Imperial College Business School an the International Energy Agency, 2021).

released them in our case. (Before our appeal was heard, USS quietly released the results itself.) They showed a large majority of beneficiaries wished to divest from fossil fuels – and as early as 2019. Yet USS has done no further survey of beneficiaries' views on fossil fuels. Why not? We pointed out the USS board chair had worked in the coal industry. Other directors had worked for JP Morgan, Citi or HSBC, which are among the biggest fossil fuel funders.[6] The directors have a career-long *status quo* bias for fossil fuels. By refusing to divest, we said they were placing their own ethical views above the 'risk of financial detriment' to the beneficiaries, fund and corporation. We should not have had to – and did not wish to – argue any of this, because a statutory derivative claim does not require showing directors are 'furthering their own ends' so why should common law? But that is the line that USS wanted, so we endeavoured to confront the directors' career-long bias for fossil fuels head-on.

(b) Submissions on breach of duty

Our substantive submission on the breach of section 171[7] was that the directors acted for an improper purpose, an abuse of power, because fossil fuels are a 'significant risk of financial detriment'. The consistent case law from *Harries v. The Church Commissioners for England* [1992] 1 WLR 1241 (approved in *Palestine Solidarity* [2020] UKSC 16, [43]) is that fiduciaries may pursue any investment policy, but not if there is a 'risk of significant financial detriment'.

In our submissions, we argued that fossil fuels are such a 'risk' to the USS fund, and risk depleting money available to USS Ltd. We were not arguing fossil fuel divestment was 'ethical'. Fossil fuels had lost money in the past. An Imperial College London and International Energy Agency report that we provided in our evidence showed fossil fuels, in any portfolio over the last 10 years globally, lost money compared to renewables. This is shown with highlights in Table 1 below.

Further, during our appeal, USS sold off or gave up most of its £450 million assets when Russia invaded Ukraine, from holding shares in companies like Lukoil. We said this was further evidence that gas, oil and coal are inherently unprofitable, risky investments.

We submitted that fossil fuels are a certain, large risk of financial detriment for the future. We said we must interpret section 171 in line with the 'right to life' in Article 2 of the European Convention on Human Rights, and the Paris Agreement goal for no more than 1.5°C in global warming. (This was before the seminal decision in *Verein Klimaseniorinnen v. Switzerland* [2024], ECHR 304.) If we follow the implications of international law, the burning of fossil fuels must all but cease. If we follow international law, fossil fuels must become nearly worthless. It would be extraordinary to say that directors' duties should be interpreted on an assumption that we will violate binding international treaties. In light of the Paris Agreement and the right to life, we said the *Human Rights Act 1998* sections 3 and 6 bind all courts to interpret directors' duties in line with this legal reality: that fossil fuel investments will become worthless, and so are a present risk of financial detriment.

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6 See Witness Statement [42] at https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20211021_2022-EWHC-1233-Ch-2023-EWCA-Civ-873_na-1.pdf

7 Under section 171 of the CA 2006, a director must (a) act in accordance with the company's constitution, and (b) only exercise powers for the purposes for which they are conferred.

Table 1.

Global Markets Portfolios		
	Fossil Fuel	Renewable Power
10 Years		
Total Return	59.0%	422.7%
Arithmetic Return	69.8%	189.1%
AAR	4.7%	18.0%
Annualised Volatility	6.3%	6.2%
Sharpe Ratio	0.30	0.86
Beta	1.31	1.08
5 Years		
Total Return	59.3%	186.6%
Arithmetic Return	62.7%	116.8%
AAR	9.8%	23.4%
Annualised Volatility	7.3%	6.1%
Sharpe Ratio	0.45	1.06
Beta	1.48	1.08

Advanced Economies Portfolios		
	Fossil Fuel	Renewable Power
10 Years		
Total Return	31.6%	727.0%
Arithmetic Return	65.6%	236.1%
AAR	2.8%	23.5%
Annualised Volatility	8.0%	6.3%
Sharpe Ratio	0.22	1.06
Beta	1.61	1.19
5 Years		
Total Return	52.9%	501.6%
Arithmetic Return	70.7%	193.7%
AAR	8.9%	43.2%
Annualised Volatility	9.7%	6.4%
Sharpe Ratio	0.39	1.69
Beta	1.87	1.18

Emerging Market and Developing Economies Portfolios		
	Fossil Fuel	Renewable Power
10 Years		
Total Return	113.8%	136.0%
Arithmetic Return	93.7%	114.9%
AAR	7.9%	9.0%
Annualised Volatility	5.4%	6.9%
Sharpe Ratio	0.47	0.46
Beta	0.90	1.01
5 Years		
Total Return	164.9%	121.2%
Arithmetic Return	108.2%	92.3%
AAR	21.5%	17.2%
Annualised Volatility	5.7%	6.4%
Sharpe Ratio	1.03	0.78
Beta	0.91	0.97

China Portfolios		
	Fossil Fuel	Renewable Power
10 Years		
Total Return	41.1%	243.5%
Arithmetic Return	59.3%	167.3%
AAR	3.5%	13.1%
Annualised Volatility	6.4%	8.6%
Sharpe Ratio	0.24	0.54
Beta	0.77	0.86
5 Years		
Total Return	-7.8%	29.0%
Arithmetic Return	2.6%	41.4%
AAR	-1.6%	5.2%
Annualised Volatility	5.9%	7.4%
Sharpe Ratio	-0.03	0.28
Beta	0.83	0.96

Source: Imperial College Business School, International Energy Agency, *Clean Energy Investing: Global Comparison of Investment Returns* (March 2021) 3, Table 1

(c) The Court of Appeal's judgment on standing

Asplin LJ, giving the judgment for the Court, ignored our submissions that common law derivative claims should be construed consistently with statute, as held in *Johnson v. Unisys Ltd*, or *Ashby v. White*. She rejected our argument that we had standing under section 172(2) and the company's object, with an observation that beneficiaries may have different interests [116]. Had we been asked, we would have pointed out that company members routinely have different interests, yet this is not a barrier to standing.

Asplin LJ preferred the more restrictive test of David Richards J in *Abouraya*, requiring (1) loss to the company that 'mirrors' loss to the claimants, and (2) a personal benefit to the directors from a breach, asserting the 'authorities are clear' [131]. Ensuring a claimant's 'harm relates to or correlates with the harm to the company is necessary', wrote Asplin LJ, 'to be satisfied that the applicant has a legitimate interest in the company's action' [108]. This 'is an easy way of ensuring an identity of interest between the company and the would-be litigant on its behalf' [106]. Requiring the directors to be 'improperly benefitting themselves' was said to be 'the rationale for the fourth exception' to the rule in *Foss v. Harbottle*. This narrow formulation ignored the wide principle of Briggs J in *Re Fort Gilkicker* of a 'court's readiness to permit someone with a sufficient interest to sue as the company's representative claimant, for the benefit of all its stakeholders.'

Asplin LJ ignored our submissions showing that David Richards J's test was contradicted by a wealth of cases at common law. There was no reference to Roskill J's decision in *IDC v. Cooley*, or the landmark case of *Cook v. Deeks*. There was no engagement with the seminal authority of *Edwards v. Halliwell*. There was no reference to Hoffmann LJ's essential pension derivative action decision in *McDonald v. Horn*. It is unclear why multiple lines of authority were ignored.

(d) The Court of Appeal's judgment on breach of duty

In application of the *Abouraya* tests to our fossil fuel claim, Asplin LJ stated 'that there was no *prima facie* case of loss to USSL' [171], without discussing the climate risks associated with fossil fuel investments. Asplin LJ rejected that the Ethical Investment Survey, 'which was completed by a tiny proportion of the active members in the Scheme can form the basis for such an allegation' that the directors were furthering their own ends [172]. There was no recognition that USS itself commissioned the survey, and could have asked members, at any time, if it chose. Asplin LJ concluded by saying it was 'an attempt to challenge the management and investment decisions of USSL as a trustee without any ground upon which to do so' [173]. If we had been asked about this, we would have said that legitimate management decisions do not extend to improper purposes such as wasting money.

Asplin LJ ignored all authorities on section 171 that we submitted. There was reference to the key test from *Harries v. Church Commissioners* that a trustee may not 'risk significant financial detriment'. There was no mention of our evidence from Imperial College and the International Energy Agency that fossil fuels have been outperformed by renewables in a choice of any 10 year investment portfolio worldwide. There was no reference to the loss of £450 million in the beneficiaries' money from investments in Russian fossil fuels. After ignoring all these submissions, Asplin LJ said that our claim fell 'at the first hurdle'. [171]

Asplin LJ's recurring theme was that the claimants had (ostensibly) conflated the trust fund, and losses to it, with the corporate trustee, whose directors we aimed to hold accountable. Apparently, the claimants 'have not made any contribution to USSL, the trustee company' [110]. This assertion is mistaken, and odd, because all the assets of the corporate trustee come from the trust fund, and in turn beneficiaries. Asplin LJ did not mention the opinion of Hoffmann LJ that one should look 'at the economic relationships involved': *McDonald v. Horn*.

A closing theme of Asplin LJ was that we should have pursued a 'beneficiary derivative claim', where it was 'not unarguable' that duties of directors in a corporate trustee are held on trust for the beneficiaries [90]. She asserted that we 'wish[ed] to avoid… seeking a representation order' to join other beneficiaries [121], and was 'surprised' we pursued a company law claim [187]. According to Asplin LJ, a beneficiary derivative claim requires (1) special circumstances – i.e. breach of duty – and a cause of action to be trust property [82], (2) that one must 'canvas the views of other beneficiaries' as in a *Beddoe* application [83], and (3) claimants to follow the procedures in CPR Rule 19.8.

Had these arguments been put to us, or raised by the USS directors' barristers, we would have answered that we had not applied for a 'beneficiary derivative claim' because past authority said 'dog leg' claims (a beneficiary suing a third party through a trustee) to enforce directors' duties were not possible. We were 'surprised' that at 3.46pm, the day before the hearing, the judges' clerk wrote saying they wanted submissions on beneficiary derivative claims, from a reference to *Roberts v. Gill* [2011] 1 AC 240 [45]-[69] and *Lewin on Trusts*, when this had not been raised in the appeal process before. Indeed, Leech J had already accepted the claimants' submissions that a dog-leg claim was not appropriate. We had the biggest crowdfund effort in UK legal history – evidence of ample support by beneficiaries – and would have done anything needed if common law and equity had been clear. Cryptic phrases like 'not unarguable' do not help. Nor do they reason why a common law company derivative claim was refused.

2. Human rights, corporate law and climate litigation

The Court of Appeal, at its heart, was confronted with a case of human rights meeting corporate law. It seems to have been uncomfortable with that. Climate litigation will intensify, especially since *Verein Klimaseniorinnen v. Switzerland* [2024] ECHR 304, where a group of elderly women successfully claimed that Switzerland was failing to meet its Nationally Determined Contribution (NDC) to cut emissions. This failure violated the claimants' right to life in the European Convention on Human Rights (from Articles 8 and 2), for instance through more heat waves. Moreover, the Swiss courts violated the right to a fair trial in Article 6 by failing to answer the merits of the claimants' case, take scientific evidence on climate damage into account, or take the complaints seriously (at [635]-[639]).

Do English courts, like Swiss courts, sometimes fail to take climate change cases seriously? In our case, we believe the answer is 'yes' because as in *Klimaseniorinnen*, in our case the Court of Appeal did not:

- Answer our submissions on statute and common law, and the objects of the pension fund
- Refer to the evidence we submitted of losses from fossil fuels, contained in the Imperial College and International Energy Agency report, or to our evidence of the losses from Russian fossil fuel investments[8]
- Engage with our submissions that the interpretation of directors' duties must be compatible with the human right to life, concretised in the Paris Agreement.

There are several reasons why certain courts may not actively grapple with the multi-faceted problems that climate damage creates. These may include a behavioural bias for the *status quo* (which also explains unwillingness of financial institutions to divest from fossil fuels), the perception that climate change belongs with a system of rules that are foreign to corporate and commercial laws, or a simple belief that the issue is Parliament's problem, not the courts'.

3. Legislation and the implications for fossil fuel divestment

Where courts fail, Parliament may act. A court case like ours for divestment has not been won yet in the UK, but the Labour government pledges it will be 'mandating UK-regulated financial institutions – including banks, asset managers, pension funds, and insurers – and FTSE 100 companies to develop and implement credible transition plans that align with the 1.5°C goal of the Paris Agreement' (p.57 of the Manifesto). This is relevant for the £80 billion university pension fund, and also the £2.5 trillion in UK retirement capital. It mirrors the requirement in the EU Corporate Sustainability and Due Diligence Directive 2024, article 22, that requires large companies, including those with over 1,000 staff and €450 million turnover, to have a plan 'compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement'.

What do credible 'transition plans' to keep within 1.5 °C require? Because planet Earth has already heated by 1.5°C and continues to get hotter, it follows that as a minimum:

1. Pension funds such as USS, and all financial institutions, must divest from fossil fuels, since all gas, oil and coal contributes to further violations of the 1.5°C goal.
2. Pension funds such as USS must write credible shareholder voting policies to decarbonise all non-fossil fuel companies in their share portfolios, for instance to speed up carmaker electrification, or to make construction firms use clean steel, not least because divestment removes the powerful disincentive against voting shares to decarbonise other companies (lest that impact gas, oil and coal investments).

[8] This is further seen in Sir Julian Flaux's Combar lecture before our hearing, asserting, mistakenly, at [35] that we had primarily relied on newspaper articles, which we *also* submitted to summarise our evidence, including the crucial Imperial and IEA report.

3. Asset managers must follow the clean energy voting policies of pension and other funds, and if they refuse the Financial Conduct Authority should impose requirements (see FSMA 2000 s 55L).

The broader problems are the governance and finance of corporations that got us here. First, corporate governance is not optimal where most boards select their own successors, subject only to removal by members. In the case of USS, even this is negated by directors themselves being members, accountable to nobody. By contrast, beneficiaries tend to care more about mitigating climate change, as their views are closer to those of the general public.[9] The Pensions Act 2004 sections 241-2 require at least one-third of pension trust boards are elected by beneficiaries or a union, yet multi-employer plans have been exempt. In section 243, the minister has a power to raise the standard to one-half, and remove exemptions for USS, NEST or others. This seems like a good, and urgent, power to use.

Second, corporations are financed not only by equity and debt, but by not paying for pollution, a regulatory subsidy wherever the externalisation of costs is ignored. For instance, Shell and BP together account for 10 times the emissions of the entire UK in their global operations.[10] The growing body of tort law around the world, such as *Smith v. Fonterra Ltd* [2024] NZSC 5 or *Lliuya v. RWE AG* raises the possibility that companies must pay for damage from greenhouse gas emissions, but we should not have to wait for the slow and contradictory workings of the bench: Parliament should make explicit that damage resulting from emissions must be paid for. The executive branch, or 200 shareholders, may also launch a public investigation in the *Companies Act 1985* section 432 into companies run for a fraudulent or unlawful purpose, a power that could be used to make the worst polluters transition to the network renewable model, like Denmark's Ørsted, which succeeded in moving from 85% fossil fuels to 85% renewables in 12 years.

Finally, rights need remedies. The European Court of Human Rights in *Verein Klimaseniorinnen* rejected that lone individuals should have standing to bring claims, but representative groups should be able to. The same logic should be applied to reforming derivative claims in the CA 2006 so that beneficiary, trade union and representative environmental groups may bring actions to enforce directors' duties. A legislature that is serious about reforming corporate governance and finance for a clean future will raise standards.

Professor Ewan McGaughey, April 2025

[9] e.g. '8 in 10 Britons concerned about climate change – half think net zero target should be brought forward' (2 August 2022) Ipsos

[10] See ACCR, 'Part 1: Royal Dutch Shell GHG emissions' (2021) and 'Part 1: BP GHG emissions' (2022)