Discussant comments on ‘Reporting on sustainability impacts; moving from disclosing to doing’ (UCL Conference)

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Materiality

- Impact materiality
  - Evident elsewhere? (e.g. GHG emissions protocol)
  - Does it influence corporate actions?
- How does the threshold for financial materiality link to impact materiality?
  - In principle…
  - In practice …see SEC climate proposal adjusting the standard financial materiality threshold for climate (to 1%)

Hierarchy of actions

- Mapping steps to outcomes at step 2 (*stakeholder pressure creates norms*)-respects shareholder interests?
- Global and jurisdictional influences:
  - Global (e.g. investor engagement)
  - Regional (e.g. EU taxonomy and disclosure)
  - National
    - Legal asymmetry *between* corporate and intermediary fiduciary duty
    - Legal uncertainty *within* the fiduciary regimes

Directors’ duties

- Legal risk in the context of sustainability – *relatively low* (Client Earth v Shell, McGaughey v USS)
- Could impact materiality in reporting drive change?
  - Possibly…but…
  - …NZAMI analogy with regard to feasibility of stated ambitions …with legal and reputational risks

Corporate form and purpose

- Corporate form as an option to adjust purpose
- For mainstream companies:
  - Direct adjustment to articles (e.g. Mayer)
  - Indirect adjustment to the key variables (profit, capital, governance, MacNeil & Esser)
- What could change to corporate purpose achieve?
  - Direct
    - *Transformative (Mayer)*
    - *Ineffective or unnecessary* (Davies)
    - *Role of government to repurpose the corporate system* (Cheffins)
  - Indirect - evolutionary change