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Engaging Stakeholders in Corporate Decision-making through Strategic Reporting: An Empirical Study of FTSE 100 Companies (Part 2) *

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Keywords:

Companies Act 2006, section 172, strategic report, stakeholders, non-financial reporting, disclosure, engagement, sustainability, ESG, empirical studies

Abstract

Non-financial reporting has risen in significance in recent years as the role of stakeholders who are not shareholders has been recognised in corporate governance frameworks. In the UK the ‘strategic reporting’ provisions of the Companies Act 2006 give effect to this policy. In Part 1 we examined the strategic reports of the FTSE 100 companies from 2015 and 2016 and focused on compliance by companies with non-financial reporting requirements. We found that compliance with those requirements was very high, amounting even to super or over-compliance. This article (Part 2 of the project) assesses the quality of non-financial reporting through a series of interviews. It evaluates whether the current regulatory framework on non-financial reporting in the UK informs stakeholders adequately so as to facilitate effective engagement in corporate decision-making.

I. Introduction

Nowadays, companies have a significant impact not only on the economy, but also on areas such as the environment, social and human rights and the communities in which they operate. Current developments in corporate governance have an increased focus on sustainability⁴ – perceived as

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⁴ Sustainability and sustainable development is on the agenda not only in corporate governance, but across the board. Most importantly, in 2015, the United Nations issued the Sustainable Development Goals (SDGs) – a collection of 17 global goals. This international community roadmap to a better world for all by 2030 covers a broad range of social, economic and development issues. See <www.undp.org/content/undp/en/home/sustainable-development-goals.html> accessed 1 June 2018. In 2018, the OECD published the Policy Note on Sustainability: OECD, *Better Business for 2030: Putting the SDGs at the Core* (2018). The Note explores ways in which the private sector can contribute to the SDGs by putting them at the centre of decision-making and provides examples of companies that have integrated the SDGs in their strategies.

advocating a responsible balance between the environmental, social and economic goals of the companies.⁵ This underlines the importance of comprehensive and effective corporate reporting. In addition to well-established financial disclosure (allowing efficient allocation of capital by investors), companies are required or encouraged to disclose certain information on the way they operate and manage social and environmental challenges.⁶ Non-financial reporting aims to provide transparency for investors and other stakeholders and, in general, encourages development of a responsible approach to business. There is also evidence that engagement by investors with companies on environmental, social and governance (“ESG”) issues can create shareholder value.⁷ At the same time, a recent empirical study shows that companies disclosing the widest range of socially responsible policies are more likely to experience ethics controversies.⁸

The strategic report⁹ introduced enhanced disclosure requirements with regard to non-financial information in the UK.¹⁰ Further, as a result of the Non-Financial Directive,¹¹ certain large companies and groups in the UK must issue a non-financial information statement as part of the strategic report.¹² This project examines the implications and relevance of the production of a strategic report on stakeholders (environmental organisations, trade unions, consumer bodies, NGOs & social, community and human rights bodies) and other interested parties (such as organisations conducting research in the field, working with wider stakeholders, or involved with reporting) and is divided into

Available at <www.oecd.org/dev/SDG2017_Better_Business_for_2030_Putting_the_SDGs_at_the_Core.pdf> accessed 1 June 2018.

⁵ Benjamin Richardson and Beate Sjaafjell, *Capitalism, the Sustainability Crisis and the Limitations of Current Business Governance* in Beate Sjaafjell and Benjamin Richardson, *Company Law and Sustainability – Legal Barriers and Opportunities 20* (Cambridge: Cambridge University Press, 2015).

⁶ See e.g. the report by the World Business Council for Sustainable Development (WBCSD) and Radley Yeldar, for an overview of the current sustainability reporting challenges. The authors reviewed 158 companies from different jurisdictions on how they report on their carbon emissions, waste outputs, water footprints and social impacts. WBCSD and Radley Yeldar, *Reporting Matters Six Years on: the State of Play WBCSD 2018 Report* (2018) <www.wbcsd.org/Programs/Redefining-Value/External-Disclosure/Reporting-matters/Resources/Reporting-matters-2018> accessed 5 November 2018.

⁷ PRI, *How ESG Engagement Creates Value for Investors and Companies* (2018) <www.unpri.org/download?ac=4637> accessed 1 June 2018.

⁸ The researchers had examined disclosures of 4,000 listed companies worldwide in 2002-14 on issues such as diversity and equal opportunity policies, the use of child labour and the monitoring of human rights in their suppliers’ facilities. The ethics controversies are, however, not revealed by the disclosures. The authors argue (p 3) that “[f]irms that disclose the widest range of socially responsible policies such as signing the UN Global Compact, disclosing ‘family friendly’ employment policies, and monitoring suppliers’ labour practices, are more likely to experience ethics controversies and adverse regulatory actions in the future.” In Exhibit I (p 4) they summarise the relationship between the number of ESG policies in a given year and the occurrence of a controversy in the following year. Gerald T. Garvey et al., *A Pitfall in Ethical Investing: ESG Disclosures Reveal Vulnerabilities, Not Virtues* (2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2840629> accessed 3 June 2018.

⁹ ss 414A- 414D Companies Act 2006 [hereinafter: “CA 2006”].

¹⁰ See especially ss 414C (7) (b) and (8)(c) CA 2006.

¹¹ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU, as regards disclosure of non- financial and diversity information by certain large undertakings and groups [hereinafter: “Non-Financial Directive”].

¹² ss 414 CA and CB CA 2006.

two parts. In Part 1 we examined the strategic reports of the FTSE 100 companies¹³ from 2015 and 2016 and focused on compliance by companies with strategic reporting requirements.¹⁴ This article (Part 2 of the project) assesses the impact of strategic reporting on stakeholders focusing in particular on the link between strategic reporting and engagement by stakeholders in board decision-making by conducting a series of interviews.

The overall aim of this project is to assess the quality of non-financial reporting and to evaluate the extent to which strategic reporting facilitates stakeholder engagement in corporate decision-making. The study carries various benefits for stakeholders, companies and private sector actors (such as investors and banks). First, it will benefit stakeholders specifically as it will assist them in using the information provided in the company's reports to exert influence over board decision-making. Secondly, the output of this research will assist companies, governments and agencies in understanding the practical implications of ESG reporting and hopefully will encourage policy changes to make non-financial reporting more effective. Finally, the research aims to assist private sector actors, such as investors and banks, to understand how corporate social responsibility ("CSR") can generate improvements in markets and institutions by building trust in the role of private capital in promoting policies that carry benefits for society at large as well as for shareholders.

This article is structured as follows: Section II sheds more light on the first part of this empirical project and explains the rationale of Part 2 in some depth. Section III describes the methodology applied in the current empirical study. Section IV summarises current non-financial reporting requirements and in Section V, the results of this study are presented and evaluated. Finally, Section VI offers conclusions and indicates the way forward, especially in view of recent reforms in this area.

II. Summary of Part 1 and rationale for the current research

Non-financial reporting currently attracts a lot of attention. Even though the continuous development of standards is aimed at assisting companies to be more transparent, the practical importance of strategic reporting (and especially, how the reports are used by wider stakeholders) has not been studied and discussed in depth. There are a few notable exceptions.¹⁵

Grant Thornton measured compliance with the strategic reports and the quality of the information disclosed. However, in comparison to our project, their scope of analysis is slightly different as they concentrated on FTSE350 companies with years ending between April 2016 and

¹³ The hundred largest companies listed on the London Stock Exchange.

¹⁴ See Irene-marie Esser et al., *Engaging Stakeholders in Corporate Decision-Making through Strategic Reporting: An Empirical Study of FTSE 100 Companies* 29(5) *European Business Law Review* 729 (2018).

¹⁵ For the list of earlier empirical studies on CSR and ESG issues see *ibid*, footnote 18.

April 2017 and focused on key performance indicators (KPIs) and risk.¹⁶ We used different criteria/variables and in Part 1 of our project we focused on compliance with statutory reporting requirements.

The second important piece of work is the research commissioned by the Principles of Responsible Investment (“PRI”) initiative. It looks at how ESG engagement creates value for both companies and investors. PRI highlighted three ESG engagement dynamics that create distinct types of value for companies and investors: communicative dynamics (engagement enabling the exchange of information between corporations and investors, creating “communicative” value), learning dynamics (engagement helping to produce and diffuse new ESG knowledge amongst companies and investors, creating “learning value”) and political dynamics (engagement facilitating diverse internal and external relationships for companies and investors, creating “political value”).¹⁷

Furthermore, Frank Bold is conducting research on the Non-Financial Directive and how companies can go beyond minimum compliance to integrate non-financial reporting into their value creation strategies. For instance, they analysed how the Non-Financial Directive has been implemented in the UK, Germany, France and Italy.¹⁸ Our study is distinguished from this paper by focusing on the empirical analysis of non-financial disclosure rather than comparison of how the Directive has been implemented by different jurisdictions.

Finally, a recent study by the FRC on “Audit Quality Review”¹⁹ indicates that the nature and quality of the work performed by audit teams on the “other information”²⁰ in the annual report vary considerably, both between and within audit firms.²¹ This is the first time that the FRC has undertaken a detailed review of auditors’ work in this area.²² Since the FRC’s paper also considers the role of auditors in verifying the strategic report (the auditors are asked to report on whether the information in the strategic report is consistent with the financial statements and has been prepared in accordance

¹⁶ Grant Thornton, *Corporate Governance Review* 8-20 (2017) <www.grantthornton.co.uk/globalassets/1.-member-firms/united-kingdom/pdf/publication/corporate-governance-review-2017.pdf> accessed 6 June 2018

¹⁷ PRI, *supra* n 7.

¹⁸ See Claire Jeffery et al., *Comparing the Implementation of the EU Non-Financial Reporting Directive in the UK, Germany, France and Italy* (2017) <<http://en.frankbold.org/our-work/campaign/eu-directive-non-financial-reporting-and-corporate-governance>> accessed 6 June 2018. Currently, they are also developing a materiality benchmark for compliance with the Non-Financial Directive (as mentioned above this Directive is now part of the CA 2006).

¹⁹ FRC, *Audit Quality Thematic Review – Other Information in the Annual Report: The Work Performed by Auditors to Meet their Reporting Responsibilities in Respect of the other Information in the Annual Report* (December 2018) <www.frc.org.uk/getattachment/7afae1fe-75c8-43fc-9f60-3f2a78b438a9/AQR-Thematic-Review-Other-Information-in-the-Annual-Report-Dec-2018.pdf> accessed 7 December 2018.

²⁰ “Other information” is all financial and non-financial information included in an entity’s annual report other than the financial statements and the audited parts of the Directors’ Remuneration Report. Importantly in the context of this paper, other information includes items of significant importance to investors and stakeholders such as the strategic report.

²¹ FRC, *Audit Quality Thematic Review*, *supra* n 19, 2.

²² *Ibid*, 1.

with applicable legal requirement),²³ this study influences the extent to which stakeholders can rely on the strategic report. The results were mixed. It concluded that limited work was performed by the auditors to corroborate all key performance indicators (“KPIs”). In particular, the comparison in ten out of thirty audits of the non-financial KPIs (such as customer relationships, or information related to employees or the organisation’s supply chain) to supporting documentation was not sufficient.²⁴ There was also limited evidence that audit teams had considered the relative importance of KPIs or justified why further evidence to ensure their accuracy was not required. The report also observed that supporting evidence was generally missing from the audit files.²⁵

Nevertheless, in the light of limited attention this extensive, two-part empirical study assessing the impact of the strategic report of a quoted company on stakeholders and other interested parties offers the opportunity to frame the issues in the context of the broader discourse on board decision-making and corporate social responsibility and can shape the way for policy-making. In Part 1, the strategic reports, and other sustainability reports, referred to in the strategic reports, of the FTSE100 companies from 2015 and 2016 were analysed and compliance with the legal norms was measured. Hence, the methodology applied is referred to as “compliance coding.”²⁶ We constructed an index of 13 variables as a measurement of non-financial reporting.²⁷ The variables were derived from the legislation on strategic reporting²⁸ and focused on the role and objective of the strategic report, the description of the company’s strategy and business model, whether the information in the strategic report has a forward-looking orientation and whose interests are taken into consideration during decision-making.

Our main conclusion was that compliance with the strategic reporting requirements was very high, amounting even to super or over-compliance.²⁹ Such a high standard of disclosure was surprising, especially taking into consideration the mainly “comply or explain” nature of non-financial reporting. The other conclusion was that companies are producing vast amounts of non-financial information in their strategic, and additional sustainability reports. Many companies made clear connections in their strategic reports to other existing sustainability reports and some companies were extremely diligent regarding non-financial reporting. On the other hand, there is still scope for improvement regarding the transparency of non-financial reporting in the UK, as the links with other reports were not very clear in the case of some companies and, on several occasions, these additional reports were very difficult to find.

²³ See especially *ibid* para. 3.6

²⁴ *Ibid*.

²⁵ *Ibid*.

²⁶ For the detailed description of the methodology, see Esser et al., *supra* n 14, Section III.

²⁷ See *ibid*, Appendix 1 for the description and coding of all 13 variables used in Part 1.

²⁸ Especially, ss 414A, 414C CA 2006 and provisions of the Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013 regarding greenhouse gas emissions.

²⁹ See Esser et al., *supra* n 14, Sections IV-VI, for the detailed analysis of all data and the conclusions.

The first part of this study also contended that a full integration of financial and non-financial information for strategic reporting is required. The empirical research suggested that the production of various additional non-financial reports could be counterproductive. The repetition of information in the strategic reports and additional CSR reports was not rare and it was often time consuming and challenging to analyse the company's policies on a given non-financial matter, as the study of several reports was necessary.

Finally, we noted that a holistic approach to strategic reporting is lacking. That viewpoint is reinforced by the fact that the strategic report is addressed to shareholders and stakeholders' considerations are only of secondary importance. In Part 1 we argued that the strategic report could be used to demonstrate compliance with s 172 CA 2006, ideally, by putting a stronger emphasis on consideration of stakeholders' interests (this could be done by incorporating all factors listed in s 172 into s 414C) rather than only concentrating on shareholders' interests.³⁰

Part 1 did not evaluate whether wider stakeholders (such as environmental organisations, trade unions, consumer bodies, NGOs & social, community and human rights bodies) receive relevant and quality information in the strategic report, nor how this information is being used by them. This Part fills that gap by gathering qualitative information from stakeholders on how they perceive and use the strategic report.

The interviews enabled us to answer the following two research questions. First, whether compliance with the statutory strategic report requirements provides stakeholders with adequate information to facilitate understanding of how companies integrate ESG issues into decision-making; and secondly, whether strategic reporting forms a basis for stakeholder engagement.

III. Methodology

1. Qualitative interviews

Part 2 adopts qualitative research methods (in the form of one to one interviews) to evaluate the impact of the strategic reports on stakeholders and other interested parties, in the context of s. 172 CA 2006. This approach allows us to evaluate how strategic reporting and especially, non-financial reporting is perceived and acted on by wider stakeholders.³¹ The emphasis is on *how* interviewees experience the strategic reports, rather than *why* they have certain experiences.³² To conduct this research we opted for the semi-structured format rather than structured (a set of standardised open-

³⁰ It is worth pointing out that since finishing Part 1 the Companies (Miscellaneous Reporting) Regulations 2018/860 [hereinafter: "2018 Regulations"] has been enacted. It requires some companies to describe how they have complied with s 172. Also, based on Provision 5 of the 2018 UK Corporate Governance Code [hereinafter: "2018 Code"], the board will be obliged to understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in s 172 have been considered in board discussions and decision-making. The new provisions are analysed in more detail in Section IV below.

³¹ Rosalind Edwards and Janet Holland, *What is Qualitative Interviewing* 90 (London: Bloomsbury Academic, 2013).

³² Sved Brinkman, *Qualitative Interviewing* 22 (Oxford: Oxford Scholarship Online, 2015).

ended questions) or unstructured interviews (equivalent to guided conversations).³³ Synchronous interviews, i.e. interviews conducted in real time (either face to face or through Skype™) were carried out.³⁴ The main advantage of this method is a greater chance of respondents answering the questions and providing detailed answers. Face-to-face interviews offer the richest source of knowledge, as participants are able to provide in-depth answers, researchers are able to obtain clarity and finally, gestures and facial expressions can offer additional information.³⁵

2. Interview process

The interview questions were carefully drafted, and they were closely linked with the Part 1 variables. Two sets of questions were prepared: one for stakeholders and one for other interested parties. Being aware of difficulties in securing an interview, we were looking for potential interviewees as widely as possible. Therefore, we decided to approach organisations with a broader interest in non-financial reporting, apart from only contacting “traditional” stakeholders, such as environmental, workforce organisations or human rights bodies.

We avoided leading questions. Also, the questions were as short and clear as possible and were divided into three groups: general questions about strategic reporting, questions focusing on non-financial issues and, finally, questions discussing changes and the current reform proposals in the area of non-financial reporting. The full list of questions is attached to this article.³⁶

Twelve individuals took part in the study. Participants included the following stakeholders:

- two social & community interest organisations;
- a professional body;
- two environmental organisations (one conservation and one public interest organisation); and
- two workforce organisations.

Also, the following other interested parties took part in our study:

- three charities exploring the role of business in society and promoting responsible investment;
- one professional body;
- one stakeholder communications consultancy.

Before the interview, participants received the proposed questions (to ensure more efficient interviews), participant information sheet (including, a short description of this project, information

³³Barbara DiCicco-Bloom, Benjamin F. Crabtree, *The Qualitative Research Interview* 40 *Medical Education* 314-316 (2006).

³⁴ Nalita James, Hugh Busher, *Internet Interviewing* in Jaber Gubrium et al. (eds) *The SAGE Handbook of Interview Research: The Complexity of the Craft* 179-180 (Thousand Oaks, California: SAGE Publications Ltd, 2012); Mario Callegaro et al., *Web Survey Methodology* 20 (Los Angeles: SAGE Publications Ltd, 2015).

³⁵ Brinkman, supra n 32, 28-29.

³⁶ Appendix 1: The list of questions to stakeholders and people or organisations with an interest due to a specific reason.

about the authors and a summary of the interview process) and participants were asked to fill in the consent form (as evidence of their willingness to participate in the study).³⁷

The interviews lasted approximately 30-40 minutes. Altogether, seven SkypeTM, one phone³⁸ and four face to face interviews took place. Face to face interviews were conducted in Edinburgh and London. All interviews were audio-recorded. All transcripts were anonymous and identifying details were removed. To further maintain the confidentiality and anonymity of the participants, only the researchers have access to the data.

3. Process of analysis

The interview recordings and notes were carefully and systematically analysed and evaluated. All responses were duly summarised under each question. As this article adopts a qualitative methodology our focus was on developing new insights on the way in which stakeholders use the strategic report.³⁹

IV. Legal position

Part 1 analysed, in depth, non-financial reporting requirements.⁴⁰ This section highlights key legal provisions relevant for Part 2 and, explains the changes recently introduced by the 2018 Regulations and the 2018 Code. The strategic report is the main source of non-financial disclosure and its purpose is to inform members of the company and help them assess how the directors have performed their duty under section 172 (duty to promote the success of the company).⁴¹ As illustrated in the table below, the current reporting requirements can be found in legislation (Companies Act 2006 and Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008⁴²) and soft law. In addition, four main sets of guidance have been issued.⁴³

Table 1: The sources of the reporting requirements and the relevant guidance

³⁷ Appendix 2: Participant Information Sheet & Consent Form.

³⁸ Due to technological problems.

³⁹ David Silverman, *Interpreting Qualitative Data* 6-7 (London: SAGE Publications Ltd, 2015).

⁴⁰ See Esser et al., *supra* n 14, Section II.

⁴¹ s 414C (1) CA 2006.

⁴² Large and Medium-sized Companies and Groups (Accounts and Reports) Regulations 2008 (SI 2008/410) [hereinafter: "Large and Medium-sized Companies Regulations 2008"].

⁴³ There are also other important initiatives and developments at the national and international level. For instance: BEIS published an updated Guidance on the 2018 Regulations: BEIS, *Corporate Governance: The Companies (Miscellaneous Reporting) Regulations 2018 Q&A* (November 2018) <www.gov.uk/government/publications/corporate-governance-new-reporting-regulations> accessed 12 November 2018. See also: FSB, *Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures* [hereinafter: "TCFD Final Report"] (July 2017) <www.fsb-tcfd.org/publications/final-recommendations-report/> accessed 20 July 2018; and DEFRA, *Environmental Reporting Guidelines: Including Mandatory Greenhouse Gas Emissions Reporting Guidance* (June 2013) <www.gov.uk/government/uploads/system/uploads/attachment_data/file/206392/pb13944-env-reporting-guidance.pdf> accessed 15 September 2018.

Legislation – CA 2006	Soft law – 2018 Code ⁴⁴
ss 414A-C – duty to prepare strategic report ⁴⁵ and its contents ⁴⁶	Principle D – The board should ensure effective engagement with shareholders and stakeholders and encourage participation from these parties.
s 414CZA – large companies ⁴⁷ to issue Section 172(1) statement as part of the strategic report; ⁴⁸ i.e. a statement describing how the directors have had regard to the matters set out in section 172(1)(a) to (f) when performing their duty under section 172.	Principle E – The board should ensure that workforce policies and practices are consistent with the company’s values and support its long-term sustainable success. The workforce should be able to raise any matters of concern.
ss 414CA and CB ⁴⁹ – non-financial statement ⁵⁰ must be issued by certain companies. ⁵¹	Provision 5
Legislation – Large and Medium-sized Regulations 2008, Schedule 7, Part 4⁵²	<ul style="list-style-type: none"> • The board should understand the views of the company’s other key stakeholders and describe in the annual report how their interests and the matters set out in s 172 CA 2006 have been considered in board discussions and decision-making (this provision makes a reference to the Section 172(1) statement, introduced by 2018 Regulations). The board should keep engagement mechanisms under review so that they remain effective. • The workforce engagement mechanisms are introduced; i.e. one or a combination of the following methods should be used: <ol style="list-style-type: none"> 1. a director appointed from the workforce; 2. a formal workforce advisory panel; 3. a designated non-executive director. If the board has not chosen one or more of these methods, it should explain what alternative arrangements are in place and why it considers
<ul style="list-style-type: none"> • Large companies to include in their Directors’ Report a statement summarising how the directors have had regard to the need to foster the company’s business relationships with suppliers, customers and others, and the effect of that regard, including on the principal decisions taken by the company during the financial year. • All UK registered companies with more than 250 employees will have to include in their Directors’ Report a statement describing and summarising how their directors have engaged 	

⁴⁴ The Code applies to all companies with a premium listing of equity shares and works on a “comply or explain” basis. The 2018 Code will take effect from 1 January 2019.

⁴⁵ The directors of a company (except a small company: ss 414A (2) and 414B CA 2006) must prepare a strategic report for each financial year of the company (s 414A(1) CA 2006).

⁴⁶ For instance, a quoted company must report on a “comply or explain” basis on (a) the main trends and factors likely to affect the future development, performance and position of the company’s business, and (b) information about—(i) environmental matters (including the impact of the company’s business on the environment), (ii) the company’s employees, and (iii) social, community and human rights issues must be provided, including information about any policies of the company in relation to those matters and the effectiveness of those policies (s 414C (7) CA 2006).

⁴⁷ See ss 465-467 CA 2006 for the definition of a medium-sized company.

⁴⁸ Added by the 2018 Regulations, Pt 2 reg. 4, effective from 1 January 2019. According to s 426B CA 2006, the Section 172(1) statement will have to be available on a website.

⁴⁹ These provisions were added as a consequence of the Non-Financial Reporting Directive. In order to prevent duplication, if a non-financial information statement complies with ss 414CB (1) to (6) CA 2006, the strategic report of which it is part, is deemed as fulfilling some of the requirements for non-financial information which are already contained in section 414C CA 2006 (see s 414CB (7) CA 2006).

⁵⁰ The non-financial information statement must, for instance, contain information, relating to, as a minimum: environmental matters, the company’s employees, social matters, respect for human rights and anti-corruption and anti-bribery matters. This disclosure has a “comply or explain” character (s 414CB (1) and (4) CA 2006).

⁵¹ Certain large companies (a traded company, a banking company and a company carrying on insurance market activity) and groups which are not small or medium-sized and which exceed on their balance sheet dates the criterion of the average number of 500 employees, are required to issue a non-financial statement.

⁵² As amended by 2018 Regulations, Pt 3. The provisions listed below will be in force on 1 January 2019.

with employees, how they have had regard to employee interests, and the effect of that regard, including on the principal decisions taken by the company during the financial year.	that they are effective.
Guidance	Guidance
ICSA and the Investment Association, <i>The Stakeholder Voice in Board Decision Making: Strengthening the Business, Promoting Long-term Success</i> ⁵³ – guidance issued to companies with the aim to help companies to consider stakeholders’ interests when taking strategic decisions.	FRC, <i>Guidance on Board Effectiveness</i> ⁵⁴ – it contains non-mandatory suggestions of good practice to support directors and their advisors in applying the Code. It is meant to be helpful also to a wide range of stakeholders when assessing the actions taken by the board in relation to the governance of the company. Importantly, it underlines that the Code “promotes a more inclusive approach to stakeholder engagement and encourages boards to reflect on the way in which decisions are taken and how that might affect the quality of those decisions.”
FRC, <i>Guidance on the Strategic Report</i> ⁵⁵ – this non-mandatory guidance encourages companies to disclose information on how companies have considered the interests of broader stakeholders, to inform members of the company and help them assess how directors have performed their duty to promote the success of the company.	
GC 100, <i>Guidance on Directors’ Duties section 172 and Stakeholder Considerations</i> ⁵⁶ – this non-mandatory guidance aims to provide practical help to directors on their performance of the section 172 duty, rather than formal legal advice. It includes an example scenario of how directors in a specific business situation could discharge their duties.	

V. Results and discussion

1. Introduction

This section sets out the results of the interviews and summarises the various responses received from the stakeholders and other interested parties. The results are presented under three headings, which emerged during the interviews and are closely linked with part 1 of this empirical study: disclosure, engagement and participation (sub-sections 2, 3 and 4 respectively). The first theme, disclosure, examines whether strategic reporting meets stakeholder needs. These results are evaluated in the context of the current non-financial disclosure requirements, which are complex and not easily digestible. The second theme examines the engagement of stakeholders exploring whether and how

⁵³ ICSA and the Investment Association, *The Stakeholder Voice in Board Decision Making: Strengthening the Business, Promoting Long-term Success* (September 2017) <www.icsa.org.uk/assets/files/free-guidance-notes/the-stakeholder-voice-in-Board-Decision-Making-09-2017.pdf> accessed 20 September 2018.

⁵⁴ FRC, *Guidance on Board Effectiveness* (July 2018) <www.frc.org.uk/getattachment/61232f60-a338-471b-ba5a-bfed25219147/2018-Guidance-on-Board-Effectiveness-FINAL.PDF> accessed 20 September 2018.

⁵⁵ FRC, *Guidance on the Strategic Report* (July 2018) <<https://www.frc.org.uk/news/july-2018/revised-guidance-on-the-strategic-report>> accessed 20 September 2018.

⁵⁶ GC 100, *Guidance on Directors’ Duties section 172 and Stakeholder Considerations* (October 2018) <[https://uk.practicallaw.thomsonreuters.com/w-017-1816?transitionType=Default&contextData=\(sc.Default\)&firstPage=true&comp=pluk&bhcp=1](https://uk.practicallaw.thomsonreuters.com/w-017-1816?transitionType=Default&contextData=(sc.Default)&firstPage=true&comp=pluk&bhcp=1)> accessed 7 November 2018.

they use the information disclosed by companies. Finally, the participation theme analyses participants' views on how their interests are reflected (or not) in the context of strategic reporting and decision-making more broadly. The aim of this sub-section is to assess to what extent stakeholders are currently involved with strategy and whether and how this process should be improved in the future. An evaluation of the Part 2 interviews is presented in subsection 5, encompassing themes recurring during the interviews and the research questions posed at the beginning of this article.

2. Disclosure

As shown in Table 1, the non-financial reporting requirements in the UK are extensive and far from holistic – companies are obliged to report on a broad range of issues and the challenge is to understand and adhere to disclosure requirements which are not the same for all types of companies. The following two themes emerged from the interviews in the context of disclosure: first, the relevance of financial vs. non-financial information; and second, the accessibility of information. They are analysed in turn, followed by conclusions which are shaped by the responses.

2.1. Financial vs. non-financial information

Participants were generally very interested in non-financial information. Often preferences depend on their background and area of expertise. However, at least half of the interviewees were interested in all types of non-financial information produced by a company and the links between different areas were specifically underlined. Environmental issues and related social issues – for instance, carbon disclosure, forest, biodiversity, and access to justice – were specifically mentioned. Our interviewees also concentrated on workforce, social issues and supply chain matters, such as: transparency and the supply chain (i.e. the company's structure and location, suppliers & engagement with suppliers), stakeholder engagement mechanisms, whether a company is reporting on tax, sexual harassment allegations, gender issues, ethnicity, human rights issues and any pending legal cases and policy commitments (such as diversity within the workforce or whistle blowing).

There was also a strong emphasis on ESG-related risks. The following were particularly prominent in the context of long-term strategy: risks to people and the environment, climate risk disclosures and workforce risk assessment. According to one of our interviewees, companies are expected to show their willingness to assess the impact of such risks, even if it is not an easy task.

Although this research does not concentrate on financial information produced by companies, the authors wanted to scrutinise participants' general views on such information, to get a better understanding of their perception of corporate reporting. In this context, the following important points have been made. First, for only a few interviewees was financial information of “secondary importance.” Most participants, however, expressed an interest in financial information, especially, strategic financial information (the key risks, business model, KPIs), which is necessary to get a

holistic view of a company and to have an idea about its finances. It was noticed that financial information is more developed than other types of information thus, the established ways of reporting on financial information gives a better basis for the comparison between companies in this area.

Secondly, participants noted that there is a misperception on the part of companies that ESG issues are not-financially material. For example, one interviewee stated that a lot of environmental information is instantly classified as non-financial information despite its clear financial implications. The other participant highlighted that although all ESG-related risks could become financially material, particularly climate risk should already be perceived as a material financial risk.

Interviewees mainly concentrated on the links between financial and non-financial information. In particular, stakeholders underlined the impact of the company’s strategy, long-term approach and profitability on workforce, environmental and human rights issues. For instance, one of the interviewees is using financial information for the comparison of the salary of the FTSE100 CEOs with the salary of ordinary workers in developing countries. For another participant, Integrated Reporting (“IR”)⁵⁷ is essential to get a holistic view of the company: “because this is how you can see whether the company is thinking about the long-term.”

Regarding the financial and especially, non-financial information, the main concern was that the strategic reports do not meet expectations for a forward-looking orientation. Part 2 confirms our conclusion from Part 1 that companies in general struggle to present their long-term approach.⁵⁸ A majority view among the participants was that currently, not many companies disclose a forward looking aspect whereas “reporting should be about expressing the company’s vision towards the possible future, as it has the power to set the agenda and it should not be just a way of communication with shareholders or stakeholders.” There were a handful of positive comments, in comparison to the negative ones, as illustrated in the table below:

Table 2: Forward looking orientation

Does the information in the strategic report meet your expectations for a forward-looking orientation? (Question 3)	
Yes	No
<ul style="list-style-type: none"> • “Some major oil companies are mentioning the future climate risks.” • “Some companies are referring to the labour issues as a potential risk.” 	<ul style="list-style-type: none"> • “Generally, no.” • “A forward-looking orientation is not really relevant in the context of non-financial reporting, because the of ‘green-washing’ approach. We would only be interested in the forward looking, specific targets set up by the companies.” • “In general, the companies are quite reluctant to give away too much of the future strategy.” • “The strategic report does not always meet our expectations regarding the forward-looking orientation. As the strategic report is a public document, it seems that the companies do not always want to fully disclose their long-

⁵⁷ <<http://integratedreporting.org/>> accessed 20 July 2018.

⁵⁸ See Esser et al., supra n 14, 750ff.

	<p>term plans.”</p> <ul style="list-style-type: none"> • “In the context of climate issues, the time scales are not sufficient, in order to provide an accurate, long-term picture.” • “This information is missing, especially, about the environmental disclosure (i.e. climate, water, de-forestation). It looks slightly better regarding the climate disclosure, due to the Task Force Climate-related Disclosure (TCFD)⁵⁹ recommendations.” • “Generally, the approach is not forward looking at all. This is an example of a regulatory requirement that does not work.”
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2.2 Accessibility

A second issue to be discussed in the context of disclosure is accessibility of the ESG information. A majority view was that the accessibility of non-financial information depends on a company, and not all reports are of a similar standard. For example, one participant noted that some improvements regarding environmental issues are visible. Also, it was acknowledged that the companies are much better at reporting on the non-financial issues, in comparison to the past. Interestingly, accessibility of the information was linked to the company’s developments on sustainability: “It is easier to find information in the reports of the companies that are less advanced on sustainability. They might have a separate section on CSR, not related to the company’s strategy and the other parts of the report. Whereas good companies, are discussing the non-financial issues throughout the report, but such narrative might be more difficult to follow.”

Two initiatives which aim to improve the current situation were underlined during the interviews. First, the Workforce Disclosure Initiative led by ShareAction⁶⁰ – where investors are encouraged to request comparable workforce data from listed companies on an annual basis. Secondly, Frank Bold’s development of a materiality benchmark for compliance with the Non-Financial Directive with the aim to create a searchable database of relevant non-financial information was also mentioned.

However, in general, the opinion among the participants was that it is “very time consuming” and “not easy enough” to find relevant non-financial information, especially for those without experience of working with the numerous and lengthy reports. The main difficulties concern the volume of information, the lack of framework or structure and the fact that the information is not in one place and that it is not properly signposted. These issues are analysed in turn below.

2.2.1. The volume of disclosed information

Undeniably, companies are now disclosing more information than a few years ago. According to one participant, the current level of data could lead to “ESG fatigue,” as it is a time-consuming task to look through the lengthy reports in a systematic way. Recent legislative changes, the CA 2006 and

⁵⁹ FSB, *TCFD Final Report* supra n 43.

⁶⁰ See <<https://shareaction.org/wp-content/uploads/2017/08/CampaignBriefing-WDI-August2017.pdf>> accessed 20 September 2018.

secondary legislation have made non-financial reporting even more complex while the Corporate Governance Code and four main sets of guidance must also be considered to understand what must be disclosed.⁶¹

Some other interviewees pointed out that the levels of disclosure are in general adequate, but that the quality is not always at the desired standard. In other words, transparency does not mean that disclosure is meaningful. Participants clearly value quality of information, which is not about the quantity of disclosed information (or “relentless transparency”), but whether “a member of the public can find the relevant information and is able to understand it.” For instance, one of the participants noted that “it is good that a company has this nice community project, but this is not what they should be thinking about.” The overall quality of reporting will only improve when the companies understand the value of reporting. In a similar vein, another interviewee noticed that “the more you take reporting seriously, the more valuable it becomes.”

2.2.2. The lack of framework

An improved framework of the report is a number one priority for the interviewees. The lack of standardised reporting means that the relevant information is not always there, or it is difficult to find it. Most interviewees argued that there is a need for greater guidance in terms of the content, to generate more comprehensive, consistent and comparable reports. For instance, regarding the disclosure on climate risk, there is some dichotomy and tension between the mandatory and non-mandatory requirements (the CA 2006 requirements, on the one hand, and the TCFD recommendations,⁶² which work as a standard of good practice, on the other hand).

The interviewees acknowledged the need for companies to meet the basic legal requirements, as currently, most of the companies do not report on how they “have regard” to the issues listed in s 172(1) CA 2006.⁶³ The interviewees complained that the relevant type of information is not always available, for example, information regarding the structure of the business, the ownership & business model, the number of subsidiaries, supply chain, where the company is operating and sourcing from.⁶⁴ Moreover, two stakeholders, interested in labour issues, raised concerns that workforce matters are not well covered in the reports: “there might be an indication in the report that ‘people are our greatest

⁶¹ See Section IV above.

⁶² FSB, *TCFD Final Report*, supra n 43.

⁶³ This confirms our Part 1 conclusion that s 172 CA 2006 is not well integrated with strategic reporting. The worst results in the compliance exercise were achieved against variable 1 – the role and objective of the strategic report. We observed that since there is no legal duty to refer to s 172 CA in the strategic report these low results could indicate a weak connection between strategic reporting and the duty to promote the success of the company. See Esser et al., supra n 14, 747ff.

⁶⁴ The interviews indicated that the additional, voluntary disclosure provided by most of the FTSE100 companies is not always helpful for the wider stakeholders. Part 1 showed that the most popular areas of additional disclosure were: customer services, relationships with suppliers, ensuring fair outcomes/ethical conduct, trust and integrity, transparency in clinical trial data, anti-bribery and corruption, pensions and savings. See Esser et al., supra n 14, 760.

asset’, but there is no detailed information on labour issues.” Especially, the information regarding the company’s employment model (the split between direct and indirect employment and the number of employees), types of contracts and the issue of the workforce voice (i.e. the mechanisms through which the company engages with their workforce) are not easily accessible.⁶⁵

It was also pointed out that the reports do not concentrate sufficiently on the long-term prospects. Although the companies have long-term plans, they are not willing to disclose them. Finally, some areas of non-financial reporting are better developed than others according to the interviewees. For instance, participants noted that the workforce-related and human rights-focused information are underdeveloped compared to environmentally-related and climate-related information – which benefitted from the developments such as mandatory disclosure on GHG emissions for a quoted company,⁶⁶ the Guidelines issued by DEFRA on environmental matters⁶⁷ and the TCFD recommendations.⁶⁸

To tackle the problems listed above stakeholders generally opted for more standardised non-financial reporting ideally on a sector-specific basis (i.e. separate requirements and guidance regarding the environmental, labour, social and human rights issues). The participants want to be involved in the development of such standards, to ensure that disclosure on non-financial issues is more meaningful. According to one participant, until standard models are created, “companies will only be reporting on positive elements.” A few interviewees pointed out that for the reporting to be successful, the non-financial actors should reach an agreement first, on *how to measure* the non-financial information in a given area. Companies should report on targets that are based on objective measures, as the descriptive reporting – on how the company is doing – is not meaningful. Secondly, the *metrics* should be established – i.e. the areas that everyone thinks are important and not only the information that is financially important for shareholders should be disclosed, thirdly, the *format of disclosure* must be set up to allow comparability. Finally, companies should have a more holistic approach to reporting – i.e. “a company should not only report on what is required, or would look good for the ESG score, but think about the issues that really matter from their perspective.” As companies produce a vast amount of data, they could improve the clarity of the basic information through e.g. signposting to other reports. A stakeholder representing the workforce suggested that standards regarding the disclosure of “some basic information on composition of the workforce between directly and indirectly hired, full time/fixed term, staff turnover” are required.

⁶⁵ Hence, it seems that despite the high levels of compliance regarding employee considerations and the fact that the companies report on a variety of issues, e.g. valuing diversity, training programmes, rewarding positive behaviours, case studies showing development of particular employees, employees’ engagement in charities and volunteering, helping working carers, employees and culture (see Esser et al., supra n 14, 754), the stakeholders do not necessarily receive the quality, workforce-related information.

⁶⁶ Companies Act 2006 (Strategic Report and Directors’ Report) Regulations 2013, Part 3 Directors’ Report, para. 7.

⁶⁷ DEFRA, *Guidelines* supra n 43.

⁶⁸ FSB, *TCFD Final Report* supra n 43.

There were also answers indicating that more work is needed to make the non-financial information as robust and useful as the financial information. Especially, it was noted that the structure could be built around the sector specific, non-financial KPIs. One participant suggested a common, mandatory reporting standard akin to the financial standards, with key issues such as sustainability, material issues/KPIs relevant for the specific industries needing to be clearly defined in the legislation.

2.2.3. The non-financial information is not in one place

The other difficulty regarding disclosure concerns the fact that various sources (which, in addition, are not always well signposted) must be analysed to find the relevant non-financial information. Hence, this is another indicator that a holistic approach to reporting is lacking.⁶⁹ The participants highlighted additional materials like separate CSR reports, informal conversations with a company, regulatory filings, NGO reports and media coverage.

Overall, the interviews highlighted that the analysis of all information produced by the company is required. Some interviewees said that company reporting is inevitably biased and that it is important to look beyond it, into the research conducted by the independent NGOs or media coverage. Third party reporting is however not without shortcomings as it is often backward looking and due to the limited resources can be subjective or limited to a few companies. One stakeholder, focusing on environmental issues, was hopeful that technological advances, such as satellites, machines/robots, remote sensing will make data production more objective and this will lead to improved corporate transparency.

Interestingly, one-to one engagements or conversations with a company were very important for a few interviewees, as the information might not be publicly available, or the most up-to date materials could not be available at all. Dialogue can help to understand the company and are vital to get under “the bonnet” of company’s relations. However, for practical reasons as well as the restrictions on disclosure of inside information this is a limited source of information about the company’s endeavours in the non-financial sphere.

Our evaluation of the interview responses related to disclosure lead to the following main conclusions. First, participants are very interested in non-financial information disclosed by companies in their strategic reports. The links between financial and non-financial information and the fact that no information can be read in isolation were highlighted. On the other hand, the interviewees noticed that the line between financial and non-financial information is not always clear-cut, as it might appear at first glance and ESG issues can be financially material. In other words, there are

⁶⁹ It should be noted at this point that we have already argued in Part 1 that production of various additional non-financial reports could be counterproductive.

problems with the definition of “non-financial” information and a full integration of both financial and non-financial information for strategic reporting is required to get a holistic view of the company and to avoid problems with classification of the information. Hopefully, this will also give a better picture of a company’s long-term approach, which should be coherent and articulated more clearly in the reports.

Our interviewees agreed that the quality of non-financial reporting must be improved, and this will only take place if the companies understand the value of reporting. The non-financial information, relevant from stakeholders’ perspective, should be available (for instance, information regarding the workforce, supply chain, ESG risks or human rights due diligence) and easily accessible. There should be less focus on the quantity of disclosure and the information ought to be better signposted. Currently, not only strategic reports, but all information produced by a company (including, the lengthy additional reports) and third parties must be scrutinised to find relevant non-financial information. According to the interviewees, non-financial reporting should be standardised as the lack of a proper framework means that the structure and the content of the reports are not comparable. Finally, our participants called for the development of sector-specific requirements in the context of non-financial reporting.

3. Engagement

This section moves beyond the disclosure requirements to consider whether and how participants use the information produced by a company. Engagement is key in assessing the relevance of strategic reporting for stakeholders and eventually formulating any recommendations regarding stakeholder participation mechanisms. The law can facilitate the creation of engagement pathways, but only interviews with stakeholders can shed some light on how they operate.

The participants acknowledged recent developments in non-financial reporting and the fact that no one questions its importance anymore. For instance, it was stated that “in comparison to how the report looked 10 years ago, there is a general structure adopted by all companies.” According to one interviewee, “the reports should be flexible to allow the companies to tell their story, but the building blocks of reporting are there, and the companies follow the logical flow.”

Overall, interviewees recognised the importance of the strategic report in understanding the organisation as a whole and in providing the context to the financial and non-financial information. Importantly, the analysis of all information produced by a company and third parties (such as NGOs, journalists) is necessary to get a holistic view of the business. However, the vast amount of information, problems with signposting and the structure of the reports mean that the full potential of strategic reporting has not yet been realised by the stakeholders.

The non-financial information is also used for campaigning, advocacy, research and communication purposes. One stakeholder noted that the strategic report is key for finding out how

the transition to a low-carbon economy is seen by a company. Only two interviewees doubted the relevance of the strategic report, stating that “sometimes the strategic report is not relevant” and “the reports do not provide adequate information on social issues as there is no standardised format regarding disclosure.”

This section clearly highlights that stakeholders and other interested parties are actively using the strategic report. The main point that can be taken from the interviews is that strategic reports do assist in understanding the organisation as a whole and in finding the specific information. In general, the participants acknowledged developments regarding non-financial reporting that happened over the year, but the lack of standardisation creates a barrier to fuller engagement. Therefore, improvements regarding the structure and content of non-financial reporting are vital and Section VI below indicates how this could be achieved.

4. Participation

Another key theme discussed in this section is whether, and if so, how stakeholders’ interests are represented in the decision-making process. We term this “participation” so as to characterise it as a stage beyond engagement (albeit it may occur even without engagement). All reporting requirements have been summarised in Table 1 above. At this point, it is only worth underlining that s 172(1) CA 2006 requires a director of a company not only to promote the success of the company for the benefit of its members, but also to “have regard” to the other factors, including the interests of wider stakeholders. Although in theory it is based on the “enlightened shareholder value” approach,⁷⁰ in practice this provision is mostly perceived to articulate shareholder primacy. Hence, the question arises whether the strategic report, which aims at assisting shareholders in assessing the implementation of s 172, provides a mechanism for the interests of other stakeholders to be taken into consideration. In addition to the current law some new stakeholder participation mechanisms have been introduced by the 2018 Regulations and the 2018 Code and will take effect only from 1 January 2019.⁷¹

This section examines participants’ views on the current and forthcoming stakeholder participation mechanisms. Two main issues were identified by participants in this context and will be discussed in turn: section 172 CA 2006 and stakeholder engagement mechanisms.

4.1. Section 172 CA 2006

4.1.1. Implementation of s 172

⁷⁰ CA 2006, c 46, Explanatory Notes, Commentary on s 172 at 325 <www.legislation.gov.uk/ukpga/2006/46/notes/division/6/2> accessed 20 September 2018.

⁷¹ We will have to wait, at least until 2020, to see whether these regulations are effective in facilitating stakeholder participation. See again Table 1 above for the summary of these provisions.

The implementation of s 172 CA 2006 would certainly be relevant in any discussion of disclosure, but since it goes beyond reporting requirements and requires “having regard” to stakeholders’ interests during the decision-making process, we include it in our discussion on participation.

All interviewees who addressed Question 4 – “Does the strategic report provide sufficient explanation of implementation of s 172 CA 2006 (the duty to promote the success of the company)?” – thought that s 172 is not well reflected throughout the reports. Overall, participants were confused as to the application of s 172 (especially where and how it should be reported on) and directors’ awareness in this regard was perceived to be inadequate.

In general, the duty to promote the success of the company is not fully implemented. The biggest problem with s 172 is that it is internalised as shareholder value maximisation. According to our interviewees, the relevance of the strategic report for stakeholders should be clarified as directors do not put much effort in demonstrating how they have considered the interests of other stakeholders and “have regard” to their interests. The primary legislation is already clear that the company should report on how the interests of other stakeholders have been considered, but according to one stakeholder “the companies have not really noticed s 172 yet”.⁷² There was only one response confirming successful engagement with this provision: “some companies give examples of decisions where they have taken the interests of stakeholders into account. It gives confidence that they probably thought about stakeholders in their other decisions, that we do not have access to. It generates evidence of trust.”

4.1.2. Recent legislative reforms relevant to the operation of s 172 CA 2006⁷³

Various issues were raised in the context of Question 14: “What is your view on the proposal to introduce further, secondary legislation on s 172,⁷⁴ especially in view of the current legislative provisions on strategic reporting as well as the proposals in the revised Corporate Governance Code?” Overall, the interviewees appreciated a re-focus of the attention on corporate governance, however, it was underlined that suggested engagement mechanisms should refer to all stakeholders and not

⁷² Some evidence suggests a procedural approach to compliance. For instance, in 2008 Loughrey et al. examined lawyers’ responses to s 172 CA 2006. Most lawyers were agnostic about whether section 172 will alter the outcome of directors’ decisions in the ordinary course of business. No lawyers have stated that it is likely to change substantive outcomes. However, the great majority of lawyers believed that section 172 is likely to affect the procedural aspects of boards’ decision making. They claimed that the need to take account of the statutory factors will result in a more bureaucratic decision-making process, and lengthier board minutes may be necessary as evidence that directors have taken those factors into account. Joan Loughrey et al., *Legal Practitioners, Enlightened Shareholder Value and the Shaping of Corporate Governance* 8 (1) *Journal of Corporate Law Studies* 79, 90 and 102 (2008).

⁷³ By the recent legislative reforms, we understand the enactment of the 2018 Regulations (which introduced the section 172(1) statement and amended the Large and Medium-sized Companies Regulations 2008) and the 2018 Code, introducing wider stakeholder participation mechanisms. See Table 1 above for more details. Please note that the 2018 Code was issued after the interviews took place. Also, not all participants were aware of the wording of the secondary legislation (i.e. the 2018 Regulations), at the time of the interview.

⁷⁴ i.e. the 2018 Regulations, see Table 1.

concentrate only on the workforce. Currently, there is a lot of change regarding disclosure requirements and “the concern is whether anyone is really engaging with these changes.” One participant explained that on the one hand, it is easy for the company to comply with the bare minimum when the additional legislative requirements are introduced (“boiler plate” disclosure), but on the other hand, reporting can change the behaviour, as is now happening with the gender gap.

The comments on the 2018 Regulations were rather negative. A few interviewees argued strongly that s 172 must be reformed and clarified, as it currently focuses on shareholder value maximisation. Any additional legislation that requires companies to report on s 172 could help to clarify the reporting requirements, but it will not solve the focus on shareholder primacy. In general, the interviewees were rather sceptical that the secondary legislation will have much impact in practice, although any further guidance on s 172 is helpful. For one participant the secondary legislation is “very weak.” The other noticed that it has certainly more structure regarding the ways companies must have regard to their employees, but not considering other stakeholders is a substantial shortcoming. On a more positive note one stakeholder, although in principle supporting the change of the primary legislation, is looking forward to seeing whether and how the secondary legislation will change the reporting practices, as most companies did not respond well to s 172. The other problem noticed was that the secondary legislation is linked to the current wording of s 172, which refers to the word “employee” rather than a broader term “workforce,” adopted by the 2018 Corporate Governance Code.⁷⁵

With regard to the new Corporate Governance Code, participants were, generally, dissatisfied with the draft Code’s provisions regarding wider stakeholder participation mechanisms and the link between s 172 and the Code.⁷⁶ It was highlighted that this area is clearly over-regulated. Wider stakeholder interests are not only discussed in the Companies Act 2006, the secondary legislation and the Code, but four sets of guidance have been issued with the aim to help companies to consider stakeholders’ interests when taking strategic decisions: Guidance on the Code issued by FRC, Guidance on the Strategic Report, the Guidance issued by ICSA and the Investment Association and finally GC 100, Guidance on Directors’ Duties section 172 and Stakeholder Considerations.⁷⁷ According to our interviewees, the number of sources is counter-productive and it is only “confusing the picture.”

In particular, it was felt that the draft proposal on workforce participation mechanisms⁷⁸ was weak and will not make a difference. The Government was criticised for “rolling back” from their proposal to introduce workers on boards. For a few interviewees, it would be far more valuable to

⁷⁵ See Provision 5 of the 2018 Code.

⁷⁶ Provisions 3 and 4 of the draft Code, which correspond with Provision 5 of the 2018 Code.

⁷⁷ See Table 1 for more details regarding the content of these Guidance.

⁷⁸ Provision 3 of the draft Code and Provision 5 of the 2018 Code are similar. Provision 5 of the final Code refers to various workforce engagement mechanisms, operating on a “comply or explain” basis; i.e. a director appointed from the workforce, a formal workforce advisory panel and a designated non-executive director.

require companies to have workers directly represented at board level rather than, for instance, encouraging directors to take employees' views into account, which is as mentioned above, one of the workforce engagement mechanisms introduced by the 2018 Code.⁷⁹ For one of our interviewees "it is almost a step back" as currently, based on s 172, all directors should take employee interests into account, rather than just only one NED.

There were various comments on the Provision 4 of the draft Code, which stated that:

[t]he board should explain in the annual report how it has engaged with the workforce and other stakeholders, and how their interests and the matters set out in section 172 of the Companies Act 2006 influenced the board's decision-making.

The interviewees underlined that reporting on s 172 through the Code is not clearly linked with the requirements set out in s 172(1) and this will add to the problem of coherence in reporting.⁸⁰ One interviewee, although in favour of engagement with all stakeholder groups, believed that the proposals for workforce participation should be different, because of the key role and impact of this group on the company. Currently, the nature of the relationship of the workforce with the company is not acknowledged (and it differs for instance, from the relationship between the customer and the company). It was stated that "all stakeholders cannot be treated in the same manner as this could lead to less engagement by the company."

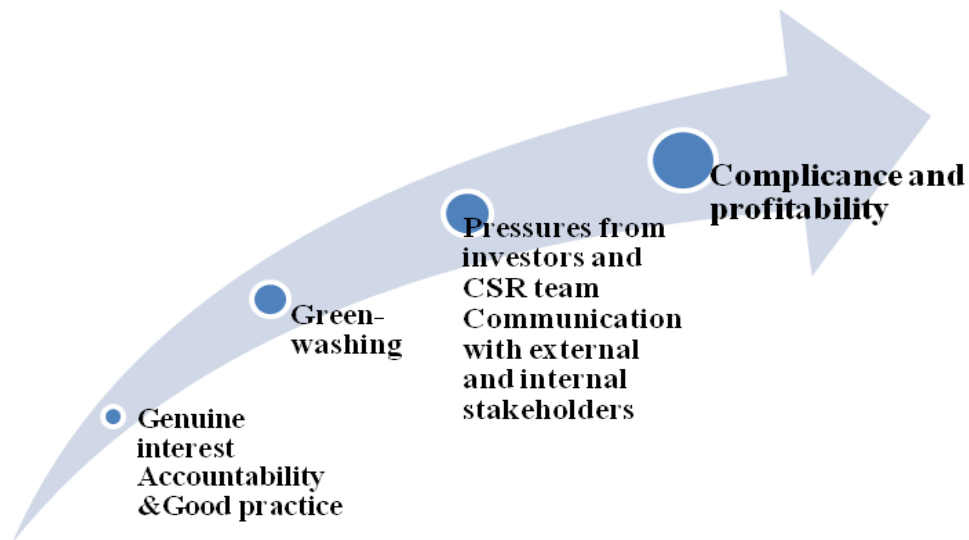
4.2. Stakeholder engagement mechanisms

According to our interviewees, the purposes of disclosing non-financial information by the company differ and include a mixture of various factors, indicated in the arrow below (Figure 1). There was a general view from the interviewees that wider stakeholders' interests/points of view do not matter in the context of strategic reporting and decision-making more broadly and therefore, stakeholder participation mechanisms do not have practical importance.

Figure 1: Purpose of disclosing non-financial information by the company (Question 8)

⁷⁹ Provision 5 of the 2018 Code.

⁸⁰ It should be underlined that the final version of this provision (now Provision 5) has been reworded. It states that the board should understand the views of the company's other key stakeholders and describe in the annual report how their interests and the matters set out in s 172 CA 2006 have been considered in board discussions and decision-making. Importantly, the reference is now made to the 2018 Regulations, which is a welcome development.



The majority view was that compliance with the law is the main reason for disclosure. One participant noticed that “20 years ago companies would not voluntarily disclose a lot of information which is currently available. Therefore, you have to think it has been mandated.” Profitability was the other main reason mentioned by interviewees – companies are interested in non-financial disclosure or sustainability only if this creates financial returns. Inside pressures (from investors or the CSR team) to communicate with external and internal stakeholders were also a strong motivation for disclosure. Creating a positive image of the company or “green-washing” was listed as another justification for disclosure. A few participants noted that there might also be some general societal pressure or a broad public accountability justification - as companies enjoy significant benefits (e.g. limited liability), they should be accountable to society and consumers. Reporting can create mechanisms for change, hence, the other reason behind disclosure could be the need or desire to show good practice. For instance, two participants mentioned Unilever plc as a company with very good reporting standards and as such the other companies could learn from their experience. Finally, interviewees highlighted that there are some companies with a genuine interest in non-financial reporting, but this is rare. Nevertheless, there was hope that intangible values such as reputation and public understanding of company operations will continue to rise as a reason for disclosure.

In the light of the above, a common view was that stakeholder engagement mechanisms should be introduced alongside the strategic report. The board should interact with all stakeholders and disclose in the report steps taken to consider their interests during decision-making processes. Moreover, one participant suggested creating a database of examples of stakeholder participation mechanisms – therefore, good practice in the area is more likely to emerge. A shift from descriptive reporting was identified as a first step towards improved participation. In other words, rather than disclosing internal processes, companies should report on the impact of the specific corporate activity on society, ideally, using an approach based on KPIs. The following examples of more effective

disclosure were given: “if they are running a mine, we want to see how they have consulted with the local communities in the area;” and “an example could be given of a time when the employee voice has affected decisions companies are making. A report demonstrating engagement in a real way would be far more valuable.”

Further, the majority felt that there should be engagement mechanisms for all stakeholder groups, rather than only focusing on the workforce. One stakeholder noted, however, that due to practical reasons and the fact that different groups have different impacts on the company, such engagement mechanisms might differ. Finally, there was one stakeholder – representing workforce – advocating for companies to engage with their workforce and trade unions over reporting. It was pointed out that “this would be extremely appropriate to consult with the workforce and gather their views. Also, a draft report could be consulted with the unions.” Importantly, this is the only evidence suggesting that some engagement with workforce is already taking place: “but clearly there should be more engagement.” The interviewee found that “this is quite disturbing that companies are not asking for more input and feedback on the report from the workforce. A lot of engagement should be triggered by the strategic report as companies currently do not see the link between reporting and consulting the workforce.”

Thus, participants argued strongly that disclosure of non-financial information is not enough, and stakeholder engagement and participation methods are needed. The board should interact with all stakeholder groups and disclose steps taken to consider their interests into decision-making processes, as the reports are too descriptive now and rarely contain evidence on how stakeholders were involved in decision-making.

5. Overall evaluation of the Part 2 interviews

Part 1 of this article demonstrated that companies are producing a vast amount of non-financial information, amounting even to super or over-compliance. Part 2 indicates that while the strategic report is improving practice regarding non-financial disclosure, stakeholders perceive that it does not meet their needs for relevant high-quality information. In other words, statutory compliance does not necessarily result in quality reporting. Part 2 also suggests that disclosure, on its own, is not a sufficient tool, and that stakeholder engagement or participation mechanisms are required.

Overall, this empirical study provides evidence that strategic reporting serves not only shareholders (i.e. the formal recipients of the report), but also stakeholders and other interested parties, who use the reports for various purposes. It is clear from the interviews that wider stakeholders want to have more input on the type of disclosed information and the format of the report. The interviews highlighted three main themes regarding non-financial reporting. First, the disclosed information should be more relevant from a stakeholder perspective and the accessibility of information should be

improved (as it is often difficult to navigate through the strategic reports or lengthy additional reports). Secondly, wider stakeholders are interested in creating more standardised non-financial reporting, which ideally, should be sector specific. Further, the strategic report should provide evidence on how stakeholders were involved in actual decision-making.

Thus, returning to the two research questions posed at the beginning of this paper, we can make two general observations. First, compliance with the statutory strategic report requirement does not always result in a better-informed stakeholder base. It does form a basis for stakeholder engagement to some extent, as we gathered evidence that stakeholders and other interested parties are actively using the non-financial information disclosed by the companies, but it is difficult to assess the causal effect of the reports more precisely. Our research suggests that the role of strategic reporting could be far greater, if the companies were able to communicate their ESG policies and their engagement policy with stakeholders more effectively. All in all, this research reveals that there is too much focus on the quantity rather than quality of disclosure. The next section presents our *recommendations* on how this state of affairs could be improved. The recommendations are presented under the two main themes: quality and standardisation of reporting and stakeholder participation mechanisms.

VI. Conclusions and recommendations

Although the effectiveness of the newly introduced provisions through the EU Non-Financial Directive, the 2018 Regulations and the revised Code can only be assessed properly in a few years time,⁸¹ this article argues that further reforms are needed to strengthen the voice of stakeholders. It seems that the governance regulator is also dissatisfied with the current state of affairs, since the FRC announced the launch of the new major project to challenge existing thinking about corporate reporting, including non-financial reporting practices, at the end of October 2018.⁸²

1. Quality and standardisation of reporting

As demonstrated in Part 1, companies are disclosing the necessary non-financial information, and we have even observed “super-compliance” with the strategic reporting requirements. More meaningful disclosure is, thus, the next step. However, quality disclosure is unlikely to be achieved unless companies understand that ESG matters may have not only clear (and positive) reputational impacts,

⁸¹ At this point it should be noted that if Brexit takes place, the UK may decide not to follow the EU Non-Financial Reporting Directive.

⁸² See www.frc.org.uk/news/october-2018/frc-to-examine-the-future-of-corporate-reporting accessed 6 November 2018.

but may also impact on a company's bottom line and may provide business benefits and competitive advantages over peers, even if they are not immediately clear, certain or measurable.⁸³

The main conclusion is thus that the interviewees do not believe stakeholders' interests matter in the context of strategic reporting and decision-making more broadly. In their view, the main reasons for disclosing non-financial information are purely compliance, whilst the genuine interest in ESG matters is at the bottom of the list. Participants argued strongly that disclosure of non-financial information is not enough, and stakeholder engagement and participation methods are needed. The board should interact with all stakeholder groups and disclose steps taken to consider their interests into the decision-making processes, as the reports are too descriptive now and rarely contain evidence on how stakeholders were involved in decision-making. Participants argued that disclosure of non-financial issues within the strategic report should be mandatory, rather than based on "comply or explain."

There are several ways in which the quality of non-financial reporting could be improved. First and foremost, reporting on compliance with s 172 CA 2006 should take place only within the strategic report. Currently, in addition Provision 5 of the Code requires that the board should understand the views of the company's key stakeholders and describe in the annual report how their interests and the matters set out in section 172 CA 2006 have been considered in board discussions and decision-making. Although Provision 5 is now linked more clearly with the legislative position,⁸⁴ it is not clear why this issue has to be dealt with in the Code. Moreover, there is still scope for improvement regarding the transparency of non-financial reporting, because the links with the additional, voluntary reports produced by companies are not always clear. As a consequence of these factors, a holistic approach to reporting is still lacking.

Secondly, we argue that a full integration of financial and non-financial information for strategic reporting should be the main objective of the future reforms. It is clear from the interviews that the analysis of all information produced by a company and third parties is necessary to get a holistic view of the business. Current reporting requirements standards might be giving the wrong impression that ESG issues are of secondary importance and that they are not financially material. The first step towards more coherent reporting could be achieved by merging the strategic reporting requirements (ss 414A-C CA 2006) with the non-financial information statement (s 414CA and s 414CB CA 2006) as there is now some duplication and as a result confusion about reporting. This could also be a step towards Integrated Reporting. This voluntary regulatory initiative aims to benefit all stakeholders (including employees, customers, suppliers, business partners, local communities,

⁸³ David Silk et al., *ESG and Sustainability: The Board's Role* (2018) <<https://corpgov.law.harvard.edu/2018/06/29/esg-and-sustainability-the-boards-role/#more-108714>> accessed 7 November 2018.

⁸⁴ See footnote 2 of the 2018 Code, which makes a reference to the 2018 Regulations.

legislators, regulators and policy-makers), not only shareholders,⁸⁵ and should be considered more carefully by the UK Government.⁸⁶

Hopefully, integration of financial and non-financial reporting would also give a better picture of a company's long-term approach, which should be coherent and articulated more clearly. Part 1 has already confirmed that the information about the long-term approach was quite general and scattered. There might have been various references to "long-termism" or "forward thinking" in the reports, but the policies on the future development and performance of the company's business and effectiveness of these policies, mentioned in s 414C (7)(a) CA 2006, were difficult to find.

Further, as a minimum, current guidance on strategic reporting should be consolidated into one document, but ideally more integrated standards of reporting should be developed. We believe that consolidation of various sets of guidance on strategic reporting is needed as there are too many overlapping sources at the moment. Three main sets of guidance on strategic reporting have been issued and, each of them has its strengths.⁸⁷

As highlighted before, our interviewees were very much in favour of creating sector-specific non-financial reporting standards. In this context, we recommend the development of non-financial reporting standards based on the TCFD recommendations,⁸⁸ as an alternative to the existing Guidance format. In their Final Report, TCFD set out four recommendations for disclosing clear, comparable and consistent information about the risks and opportunities presented by climate change. Importantly, the recommendations are supported by useful Recommended Disclosures which are divided into Guidance for all Sectors and Supplemental Guidance for Certain Sectors.⁸⁹ The development of Supplemental Guidance could help highlight important considerations for specific sectors and especially stakeholder groups, such as workforce or suppliers and thus address the needs underlined by our participants. The scenario analysis adopted by the framework (a method for developing strategic plans) could also help the companies to improve their forward-looking assessments.⁹⁰

Although the TCFD framework focuses only on climate change, it has received a lot of positive feedback and acknowledgment across the board. For instance, the WBCSD 2018 Report⁹¹

⁸⁵ The International <IR> Framework, 4 (2013) at <<http://integratedreporting.org/resource/international-ir-framework/>> accessed 7 November 2018.

⁸⁶ For instance, in August 2018, the International Integrated Reporting Council has launched a new IR Academic Database, bringing together over 200 academic studies highlighting the potential positive ramifications of adopting integrated reporting, as well as commenting on emerging best practice. See <www.iracademicdatabase.org/> accessed 8 November 2018. For a critique of IR see John Flower, *The International Integrated Reporting Council: A Story of Failure* 27 *Critical Perspectives on Accounting* 1, 15 (2015).

⁸⁷ The following database of recognised reports and leading practices should also be consulted <<http://examples.integratedreporting.org/home>> accessed 8 November 2018.

⁸⁸ FSB, *TCFD Final Report* supra n 43. As of 26 September 2018, 513 organizations across the world have expressed their support for the TCFD recommendations. See <<https://www.fsb-tcf.org/>> 8 November 2018.

⁸⁹ *Ibid*, 13ff.

⁹⁰ *Ibid*, 25ff.

⁹¹ WBCSD and Yeldar, supra n 6,8 and 10.

argues that the framework could be easily adapted to other emerging ESG issues (as it helps companies report information that is clear, comparable and decision-useful for investors) and the report states there have been calls for the TCFD's recommendations to be embedded in to the Non-Financial Reporting Directive review in 2019. Further, in November 2018, a coalition of corporate reporting bodies, overseen by International Integrated Reporting Council, launched a two-year project aimed at unifying the business community's approach to sustainability reporting, by supporting the TCFD framework.⁹²

2. Stakeholder participation mechanisms

Disclosure plays a crucial role, but on its own it is not enough to improve stakeholder participation. For stakeholders to be fully engaged they need adequate information, in the form of disclosure, but they also need mechanisms to facilitate participation from their side. The prioritisation of shareholder value and the lack of focus on stakeholder interests could be the main reason for the lack of engagement with stakeholders. Moreover, stakeholders' comments about the secondary legislation were rather negative and it was observed that the new Code offers rather weak proposals on stakeholder participation, as it only focuses on one group (the workforce).

We therefore recommend that the revised Corporate Governance Code should focus on engagement mechanisms for all stakeholders, rather than only suggesting the adoption of one of three workforce engagement mechanisms – a director appointed from the workforce, a formal workforce advisory council, or a designated non-executive director.⁹³ The Guidance on Board Effectiveness clearly refers to stakeholders more widely and the new Code should be in line with the Guidance.⁹⁴ Hence, all references to “workforce” in Provision 5 of the revised Code should be replaced with “stakeholders”.

Secondly, as we have recently pointed out in another paper,⁹⁵ we suggest combining an advisory stakeholder panel (including the representation of the workforce) and a designated non-executive director representing all stakeholders.⁹⁶ The stakeholder panel could meet outside the board and report to the board through a designated NED. This could be a route to get the views of all

⁹² See <<http://integratedreporting.org/news/leading-corporate-reporting-bodies-launch-two-year-project-for-better-alignment/>> accessed 8 November 2018.

⁹³ Provision 5 of the 2018 Code.

⁹⁴ FRC, *Guidance on Board Effectiveness*, supra 54 paras. 40-46.

⁹⁵ Irene-marie Esser and Iain MacNeil, *Disclosure and Engagement: Stakeholder Participation Mechanisms* European Business Law Review (2019) (forthcoming).

⁹⁶ Libson underlines the role of designated board sub-committee in pursuing ESG goals. He states that a corporation's decisions that have a significant impact on social matters, such as environmental implications, should be delegated to shareholders to approve. Importantly, one of the options for achieving this goal is the top-down form that establishes an independent sub-committee on the board that identifies significant social issues and delegates decisions on such issues to shareholders. Adi Libson, *Taking Shareholders' Social Preferences Seriously: Confronting a New Agency Problem* Bar Ilan University Faculty of Law Research Paper No. 18-18 (2018) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3226767> accessed 8 November 2018.

stakeholders heard at board level, while still protecting the workforce. The biggest challenge with regard to the suggested stakeholder panel concerns setting out an effective mechanism to determine the composition of the panel and the representation of the interests of all stakeholders. To achieve this goal companies could advertise recruitment to the panel on their websites or publish surveys annually. Alternatively, stakeholders could be obliged to create a central organisation (divided into sub groups) representing their interests, which could be a point of reference for the companies. Other challenges include the role and working pattern of the advisory panel, cooperation between the panel and board and reporting of the NED to the board.

In this context reference to the South African Social and Ethics Committee (“SEC”) is relevant. A similar approach could be useful in the UK context and could address the problems of maintaining a collective board view and mitigating conflicts of interest (between shareholders and stakeholders) in the context of directors’ duties. The SEC creates a statutory solution and could be applied with adjustments to the UK. This committee is dealt with in legislation in South Africa, but a similar committee could be provided for in the UK Companies Act as part of the current strategic reporting framework.⁹⁷ It would make sense if this committee were mandatory. The same sample of companies that have to produce a strategic report should also have such a committee in place. The UK is characterised by a flexible system that operates on a “comply or explain” basis but we are of the view that this would not be sufficient in this context. We argued before that there is no mechanism for market discipline available to stakeholders analogous to the selling option available to shareholders and therefore the rationale for “comply or explain” is weaker in this context. A mandatory committee, considering ESG issues, will provide a level-playing field for stakeholder engagement.⁹⁸

⁹⁷ The composition, role and functions of the SEC as well as its transposition to the UK are discussed in detail in Esser and MacNeil, see supra n 95.

⁹⁸ Esser and MacNeil, supra n 95.

Appendix 1:

Interview questions to (i) stakeholders and (ii) people or organisations with interest due to a specific reason⁹⁹

(i) Interview questions to stakeholders

General questions

What type of stakeholder are you, e.g. environmental organisation, human rights body, social & community interest organisation, mixture of few, another one (please specify)?

1. What do you expect from the strategic report in general?/ What type of information are you interested in when reading the strategic report?
2. Are you interested in financial information (e.g. review of the company's business and the principal risks and uncertainties facing the company or information about the description of the company's strategy and business model, KPIs)? If yes, please specify what are you interested in and why.
3. Does the information in the strategic report meet your expectations for a forward-looking orientation? If yes, give examples.
4. Does the strategic report provide sufficient explanation of implementation of s 172 CA 2006 (the duty to promote the success of the company)?

Non-financial issues

5. Is it easy to find relevant non-financial information in the report? Please describe any difficulties you encountered.
6. When reading the report what non-financial information (e.g. information about environmental/greenhouse gas emissions, employee/workforce, gender diversity matters, social, community and human rights issues) are you interested in?
7. Is the strategic report your only source of non-financial information about the company?
8. What in your view is the purpose of disclosing non-financial information by the companies?
9. Do you use the non-financial information provided in the strategic reports? If yes, explain how.
10. Are companies engaging with you regarding non-financial issues during the creation of strategic reports or have you heard about any evidence of engagement? If yes, please describe it shortly.
11. Would you like to be involved or involved more in the production of strategic reports?

⁹⁹ As the research involved human subjects, ethical approval from the College of Social Science Ethics Committee, at the University of Glasgow was obtained before contacting potential applicants. The ethical application involved issues such as: ethical risks, confidentiality, anonymity and data handling. We have compiled a list of possible participants and they were contacted, via email, between April and July 2018. Short information about the aims of this research was provided, together with a sample of interview questions and a link to Part 1 of the research.

Changes

12. Are the current levels of non-financial disclosure in the report adequate? /Are the current reports useful/detailed enough?
13. In your view, should there be any change to the strategic report in the future, especially with regard to non-financial reporting? If yes, how the reports could be improved?
14. What is your view on the proposal to introduce further, secondary, legislation on s 172, especially in view of the current legislative provisions on strategic reporting as well as the proposals in the revised Corporate Governance Code?

(ii) Interview questions for people or organisations with interest due to a specific reason

General questions

1. What do you expect from the strategic report in general? / What type of information are you interested in when reading the strategic report?
2. Are you interested in financial information (e.g. review of the company's business and the principal risks and uncertainties facing the company or information about the description of the company's strategy and business model, KPIs)? If yes, please specify what are you interested in and why.
3. Does the information in the strategic report meet your expectations for a forward-looking orientation? If yes, give examples.
4. Does the strategic report provide sufficient explanation of implementation of s 172 CA 2006 (the duty to promote the success of the company)?

Non-financial issues

5. Is it easy to find relevant non-financial information in the report? Please describe any difficulties you encountered.
6. When reading the report what non-financial information (e.g. information about environmental/greenhouse gas emissions, employee/workforce, gender diversity matters, social, community and human rights issues) are you interested in?
7. Is the strategic report your only source of non-financial information about the company?
8. What in your view is the purpose of disclosing non-financial information by the companies?
9. Do you use the non-financial information provided in the strategic reports? If yes, explain how.

Changes

10. Are the current levels of non-financial disclosure in the report adequate? /Are the current reports useful/detailed enough?
11. In your view, should there be any change to the strategic report in the future, especially with regard to non-financial reporting? If yes, how the reports could be improved?

12. What is your view on the proposal to introduce further, secondary, legislation on s 172, especially in view of the current legislative provisions on strategic reporting as well as the proposals in the revised Corporate Governance Code?

Appendix 2:

Participant Information Sheet & Consent Form

Participant Information Sheet

Title of Project: **“Engaging stakeholders in corporate decision-making through strategic reporting: an empirical study of FTSE 100 companies, Part 2.”**

Names of Researchers: Prof Iain MacNeil, Dr Irene-marie Esser and Dr Katarzyna Chalaczkiewicz-Ladna

Dear Potential Participant,

You are being invited to take part in a research study. Before you decide about participating it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part. Thank you for reading this.

What is our project?

According to the Companies Act 2006, the directors of a company (except a small company: s 414A (2) CA 2006) must prepare a strategic report for each financial year of the company (s 414A (1) CA 2006). Strategic reporting introduced enhanced disclosure requirements with regard to non-financial information in the UK. We want to evaluate and analyse the impact of the strategic report of a quoted company on shareholders and especially other stakeholders (e.g. employees, customers, suppliers, environmental agencies, social, community and human rights bodies) in the context of s 172 CA 2006 (duty to promote the success of the company). Our project consists of two stages. In Part 1, the strategic reports of the FTSE 100 companies were scrutinised (the full paper with all our results and conclusions can be found here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3049203).

Part 2 will involve carrying out detailed interviews with selected stakeholders regarding the strategic reports of the FTSE 100 companies. The interviews will gather views on and experience with the strategic reports and especially non-financial reporting and will enable conclusions to be drawn on whether or not the views of the stakeholders correspond with the Part 1 results. In other words, Part 2 will gather evidence on whether compliance with strategic report requirements results in a better informed stakeholder base and it will allow us to evaluate the impact of the report on stakeholders, in particular, the extent to which strategic reporting forms a basis for stakeholder engagement.

What would it involve?

We would like to carry out an interview with you and will establish a suitable place, day and time for our meeting (the interview could also take place via Skype if this is more suitable). We are interested to find out your views about the strategic report, especially we are interested in the strategic reports of the FTSE 100 companies. Please find attached the list of specific questions we would like to discuss with you during the interview. We expect that this will take around 30-40 minutes. With your permission, a recording will be made of our discussion to allow us to have an accurate record of our conversation. Once we have made a transcript, the recording will be destroyed and you will not be identified in our report.

Please note that your participation in this study is entirely voluntary. If you choose not to participate or to withdraw from the study at any time, you can do so without penalty or loss of benefit to yourself. We would like to confirm that confidentiality will be respected, unless there are compelling and legitimate reasons for this to be breached. If this were the case we would inform you of any decisions that might infringe on confidentiality. The results of the research study may be published, but your identity will remain confidential and your name will not be disclosed to any outside party. The data collected will be kept in secure storage at all times. In this research, there are no foreseeable risks to you. Furthermore, no information gained from this survey will be identified with your name or the name of your organisation and the results will be presented in aggregate in the research report. Finally, we would like to inform you that this project has been considered and approved by the College of Social Sciences Research Ethics Committee at the University of Glasgow.

Who are we?

We are academics working in the area of commercial and company law. Professor Iain MacNeil is the Alexander Stone Chair of Commercial Law and Head of School at the University of Glasgow. Dr Irene-marie Esser is a Senior Lecturer in Commercial Law at the University of Glasgow and a Professor Extraordinarius at the University of South Africa. Dr Katarzyna Chalackiewicz-Ladna is a Graduate Teaching Assistant at the University of Glasgow and a Tutor at the University of Edinburgh.

Next Steps?

In confirmation of your agreement to participate in this study please sign and return the attached consent form. If you would like to discuss any aspect of this further or to arrange a suitable day and time for our meeting please contact us by email.

If you would like to complain about any aspect of this research or interview please contact: College of Social Sciences Ethics Officer, Dr Muir Houston, email: Muir.Houston@glasgow.ac.uk

Thank you for taking the time to read this and consider taking part in our project.

Kind regards

Prof Iain MacNeil, Dr Irene-marie Esser and Dr Katarzyna Chalackiewicz-Ladna

Consent Form

Title of Project: **“Engaging stakeholders in corporate decision-making through strategic reporting: an empirical study of FTSE 100 companies, Part 2.”**

Name of Researchers: Prof Iain MacNeil, Dr Irene-marie Esser and Dr Katarzyna Chalaczkiewicz-Ladna

I confirm that I have read and understood the Participant Information Sheet for the above study and have had the opportunity to ask questions. All parts of the research study are clear to me.

I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.

I consent / do not consent (delete as applicable) to interviews being audio-recorded.

I understand that:

- All names and other material likely to identify individuals will be anonymised and participants will be referred to by pseudonym.
- The material will be treated as confidential and kept in secure storage at all times.
- The material may be used in future publications, both print and online.
- I agree to waive my copyright to any data collected as part of this project.
- There are no direct risks or benefits involved in my participation.

I agree to take part in this research study, which includes being interviewed.

I do not agree to take part in this research study

Name of Participant
Signature

Date

Name of Researcher
Signature