

Acting For Better Business

What exactly is business for? American economist Milton Friedman suggested that corporations exist to create wealth for their owners (within the bounds of ethics and law)ⁱ. This idea, known as shareholder primacy, seems to be a widely held perspective on the duties of board members.

“Chosen by shareholders, the primary job of a public company’s board of directors is to look out for the shareholders’ interests.” The Financial Industry Regulatory Authorityⁱⁱ

Crucially, the position is backed by law. In the US, Delaware is the most popular state for incorporating businesses. (In 2021, 93% of initial public offerings (IPOs) chose Delaware as homeⁱⁱⁱ.) In 2015, Leo E. Strine, Jr., then Chief Justice of the Delaware Supreme Court, declared:

“...directors of a for-profit corporation must at all times pursue the best interests of the corporation’s stockholders.”^{iv}

But even advocates of shareholder primacy agree that the concept does not mean maximizing profits or short-term stock prices. What does “shareholders’ best interests” really mean?^v Moreover, US law varies by state and even the idea of shareholder primacy has been disputed.

“There is a common belief that corporate directors have a legal duty to maximize corporate profits and ‘shareholder value’ – even if this means skirting ethical rules, damaging the environment or harming employees. But this belief is utterly false”. Lynn Stout, Cornell Law^{vi}

The Business Roundtable, a nonprofit lobbying organization whose members include JP Morgan Chase, Johnson and Johnson, and Alphabet, has suggested that their firms recognize multiple stakeholders’ interests.

“Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.” Business Roundtable, Statement on the Purpose of a Corporation^{vii}

To provide the legal backing for a multi-stakeholder model, states have begun to allow organizations to incorporate as benefit corporations. Benefit corporation status explicitly allows directors to consider the interests of multiple stakeholders. This legal structure has even become a requirement for continued B Corp certification where the option exists in local law.

While these laws bring clarity to benefit corporations, sympathetic observers have had reservations. One concern is that the existence of benefit corporations make it more likely that judges will determine that other corporations are not allowed to consider stakeholder interests^{viii}.

The UK Companies Act

The United Kingdom of Great Britain and Northern Ireland (UK) have faced similar issues. UK law is somewhat easier to interpret compared to US law, in that company law, covering England, Scotland, Wales and Northern Ireland, is set centrally in Westminster. One law, the 2006 Companies Act, has been the key legal source on matters of director responsibility^{ix}. A key section of the law, Section 172, gives directors a “duty to promote the success of the company” for the benefit of members of the company (i.e., shareholders). This would “most likely”, but not necessarily, mean considering:

- long-term consequences,
- interest of employees,
- relations with suppliers, customers, and others,
- the community and environment,
- corporate reputation,
- and the need to act fairly between members of the company.

The Better Business Act Campaign

In 2021 a campaign was launched in the UK to amend this Companies Act.

*“Through the Better Business Act campaign, we are aiming to change the law to make sure every single company in the UK, whether big or small, puts balancing people, profit and planet at the heart of their purpose and the responsibilities of their directors.”^x Douglas Lamont
CEO, Innocent Drinks and Campaign Co-Chair*

The force behind the campaign is B Lab UK, the branch of the nonprofit B Lab which manages UK B Corp certifications. Many of the companies supporting the change to the law are B Corps—for example, Innocent Drinks, Danone, Divine Chocolate, BrewDog, and The Body Shop International. Other major corporations and interest groups such as Quorn Foods, John Lewis, the Institute of Directors, the TUC (Trades Union Congress), and the Chartered Management Institute have also pledged support^{xi}.

Why Is Change Needed?

B Lab commissioned a survey of the UK public in 2020^{xii}. It showed rising discontent with capitalism, especially among younger people. Although the majority thought capitalism was the best system, most saw a need to “fix” it. Even among those who identified with the (right-of-center) Conservative party, more felt that capitalism needed fixing (45%) than felt it was working well (41%).

Critically, 72% of the UK public wanted a clear change in company responsibility, namely that “business should have a legal responsibility to people and the planet, alongside maximising profit”.

The Objective Of The Better Business Act Campaign

The campaign wanted to see four principles reflected in the duties of directors in an amended version of the Companies Act^{xiii}.

- Aligned interests: The interests of multiple stakeholders should be considered.
- Empowering directors: To use their judgment in balancing and advancing stakeholder interests.
- Default change: The change should apply to all companies and not be an opt-in.
- Reflected in reporting: Companies should be obliged to report on how they balance people, planet, and profit.

Support From Across The Political Spectrum

One the most interesting features of the Better Business Act campaign is its cross-party focus. Traditionally the UK Conservative Party has been closest in ideology to the Republicans in the US. For the 2021 Conservative Party Conference, the campaign compiled essays from five Conservative MPs and a supportive quote from the (then) Conservative Prime Minister Boris Johnson, who was promising to “Build Back Better and level up opportunity for people and businesses across the UK.”^{xiv} The Conservative Business Minister Paul Scully engaged in “encouraging” talks with the campaign^{xv}.

In the UK the official opposition to the Conservatives is from the left-leaning Labour Party, which has significant ties to the Democrats in the US. Labour leader Keir Starmer has given his backing to the campaign^{xvi}. Caroline Lucas, the only UK Green Party MP, has also thrown her support behind the change to the law^{xvii}.

That said, not all commentators agree. One has suggested that this would not really make a difference to the influence of providers of short-term capital and would encourage fights between stakeholders rather than building value for all^{xviii}. Others have been unsympathetic to the entire idea. One person noted on Conservative Home (a right-leaning website):

“...we can see in this initiative of ‘Better Business’ the type of soggy wet blairite [after the former Labour PM] regulatory nonsense that would impair entrepreneurs operating in the international world.”^{xix}

Building Momentum

To become involved in the campaign, organizations have to agree to support the principles of the campaign (as attested to by the CEO or member of the leadership team), lend their name and logo to the campaign, work for law change, and do so in a non-party political manner^{xx}. While organizations are the official members of the coalition, business leaders are central to the campaign.

“We need to set minimum expectations about how businesses will contribute to society and ensure it has a positive environmental and social impact...That's why I back this bill.”^{xxi} Paul Polman, Co-founder and Co-Chair, IMAGINE and former CEO of Unilever

“I believe that every business should not just be about profit but also about purpose and operate in a way that isn't detrimental but instead benefits society and the environment.” Wai Foong Ng, Founder and CEO of Matchable

Members of the public see a call to action when they visit the Better Business Act website. They are asked to send a letter to their MP using a provided sample letter. The website also encourages sharing details of the campaign.

What Happened?

In March 2022, P&O Ferries fired 800 employees, some by video message, replacing them with cheaper, less-trained contract workers to increase dividends for its owners. This appeared illegal, and few in any part of UK politics supported P&O. A Conservative MP and a Labour MP protested together, supported by the Archbishop of Canterbury (the most-senior religious figure in the Church of England). Then, Business Secretary Kwasi Kwarteng warned that P&O Ferries faced unlimited fines, highlighting bad business practice as the reason.^{xxii}

In the same month, the Better Business Act campaign brought in retail guru, author, podcaster, and TV celebrity Mary Portas as its co-chair.^{xxiii} She said:

“...businesses deserve the certainty and support in law that would level the playing field for responsible decision-making. But as things stand, the Companies Act still allows some companies to pursue profits at the expense of people and the planet.”^{xxiv}

Portas was previously an adviser on retail to the former Conservative Prime Minister David Cameron, and she set her sights on influencing the government of Boris Johnson. Each year the UK government sets out plans for the coming year in a speech written for the monarch and delivered to parliament (known as the Queen’s, or King’s, Speech). The Better Business Act campaign hoped that their proposed change in the Companies Act would feature in the 2022 Queen’s Speech, but this did not happen. Instead, the government promised something less, to draft new legislation in the area^{xxv}. Boris Johnson then stepped down as Prime Minister and it was unclear what the new PM, Liz Truss, thought^{xxvi}. It didn’t matter, as she was very quickly replaced by Rishi Sunak. The campaign has not gotten what it wants, but change in business might still be on the agenda.

Endnotes

- ⁱ IncNow, “What Is Shareholder Primacy, and Why Does It Matter Right Now?”, 05/01/2022, <https://www.incnow.com/blog/2022/01/05/what-is-shareholder-primacy/>, accessed September 09, 2022
- ⁱⁱ FINRA, “Get On Board: Understanding The Role of Corporate Directors”, <https://www.finra.org/investors/insights/get-board-understanding-role-corporate-directors>, Accessed Sept 23, 2022
- ⁱⁱⁱ Delaware Division of Corporations, “Annual Report Statistics”, <https://corp.delaware.gov/stats/>, Accessed Sept 23, 2022
- ^{iv} Leo E. Strine, Jr., University of Pennsylvania Law School, ILE, INSTITUTE FOR LAW AND ECONOMICS “The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law”, RESEARCH PAPER NO. 15-08,
- ^v Leo E. Strine, Jr., University of Pennsylvania Law School, ILE, INSTITUTE FOR LAW AND ECONOMICS “The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law”, RESEARCH PAPER NO. 15-08,
- ^{vi} Lynn Stout, “Corporations Don’t Have to Maximize Profits”, The New York Times Opinion Pages, <https://www.nytimes.com/roomfordebate/2015/04/16/what-are-corporations-obligations-to-shareholders/corporations-dont-have-to-maximize-profits>, Accessed Sept 23, 2022
- ^{vii} Business Roundtable, “Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans: Updated Statement Moves Away from Shareholder Primacy, Includes Commitment to All Stakeholders”, August 19, 2019, <https://opportunity.businessroundtable.org/ourcommitment/>, Accessed Sept 23, 2022
- ^{viii} Noam Noked, “Benefit Corporations vs. “Regular” Corporations: A Harmful Dichotomy”, Harvard Law School Forum on Corporate Governance, 05/13/2012, <https://corpgov.law.harvard.edu/2012/05/13/benefit-corporations-vs-regular-corporations-a-harmful-dichotomy/>, Accessed Sept 23, 2022
- ^{ix} “Companies Act 2006”, Legislation.gov.uk, <https://www.legislation.gov.uk/ukpga/2006/46/contents>, Accessed Sept 23, 2022
- ^x Better Business Act, “The world needs business at its best”, B Lab UK
- ^{xi} Better Business Act, “Supporters”, Updated September 22, 2022 <https://betterbusinessact.org/supporters/>, Accessed Sept 23, 2022
- ^{xii} All information in this section comes from “Responsibility in Business: Summary of polling”, Hanbury Strategy for B Lab United Kingdom, May 2020
- ^{xiii} Better Business Act, “About The Better Business Act”, <https://betterbusinessact.org/about/>, Accessed Sept 23, 2022

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- xiv “Business at its best A collection of essays for Conservative Party Conference 2021”, Compiled by the Better Business Act
- xv Adam McCulloch, “Mary Portas and coalition of firms urge MPs to support a Better Business Act”, Personnel Today, 04/21/2022, <https://www.personneltoday.com/hr/mary-portas-and-coalition-of-firms-urge-mps-to-support-a-better-business-act/>, Accessed Sept 23, 2022
- xvi Adam McCulloch, “Mary Portas and coalition of firms urge MPs to support a Better Business Act”, Personnel Today, 04/21/2022, <https://www.personneltoday.com/hr/mary-portas-and-coalition-of-firms-urge-mps-to-support-a-better-business-act/>, Accessed Sept 23, 2022
- xvii Better Business Act, “Britain needs business at its best”, <https://betterbusinessact.org/>, Accessed Sept 23, 2022
- xviii Mark Goyder, “The Better Business Act — A Charter for Pie Splitters?”, Board Intelligence, 11 July 2021, <https://www.boardintelligence.com/blog/the-better-business-act-a-charter-for-pie-splitters>, Accessed Sept 23, 2022
- xix Comment by PeterO, December 16, 2021, <https://conservativehome.com/2021/12/16/jason-stockwood-footballs-european-super-league-debacle-offers-important-lessons-for-business/>, Accessed Sept 23, 2022
- xx Better Business Act, “Join Us”, <https://betterbusinessact.org/act-now/>, Accessed Sept 23, 2022
- xxi Better Business Act, “Supporters”, Updated September 22, 2022 <https://betterbusinessact.org/supporters/>, Accessed Sept 23, 2022
- xxii Heather Stewart, Gwyn Topham and Matthew Weaver, “P&O Ferries told it could face unlimited fine if sackings unlawful”, The Guardian, March 18, 2022, <https://www.theguardian.com/business/2022/mar/18/po-ferries-could-face-an-unlimited-fine-if-sackings-unlawful>, Accessed Sept 23, 2022
- xxiii Better Business Act, “HIGH STREET ROYALTY SETS SIGHTS ON QUEEN’S SPEECH”, <https://betterbusinessact.org/the-better-business-act-welcomes-mary-portas-as-our-new-campaign-co-chair/>, Accessed Sept 23, 2022
- xxiv Better Business Act, “HIGH STREET ROYALTY SETS SIGHTS ON QUEEN’S SPEECH”, <https://betterbusinessact.org/the-better-business-act-welcomes-mary-portas-as-our-new-campaign-co-chair/>, Accessed Sept 23, 2022
- xxv Better Business Act, “The Queen’s Speech & What It Means for the BBA”, <https://betterbusinessact.org/the-queens-speech-what-it-means-for-the-bba/>, Accessed Sept 23, 2022
- xxvi The Associated Press, “Liz Truss is now officially the U.K.'s prime minister after meeting with the queen”, 09/06/2022, <https://www.npr.org/2022/09/06/1121266992/liz-truss-prime-minister-queen-elizabeth>, Accessed Sept 23, 2022