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Mission-led business: CSR re-boot or paradigm shift?

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Mission-led business: CSR re-boot or paradigm shift?

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Summary

Businesses are like cement. Both are an integral part of the society we inhabit and yet, for the most part, barely visible to us as tangible entities. We give them little thought, but our lives would be very different were we to wake up to a world without either. In April 2016, the UK government did invite us to think about the nature of business though, as part of what it called a review of 'mission-led business'. It set up an advisory panel and ran a public consultation and, seven months on, the panel reported to the government with its recommendations. In this essay, David Hunter and Nina Boeger consider the review's implications against a backdrop of ongoing political and economic turmoil in the UK and beyond, and a climate marked by an ever-diminishing trust in the governance of our mainstream corporations. Many recognise that 'business as usual' is not an option for corporate governance in the 21st century. But does the review point towards a wider paradigm shift, a movement towards more responsible and sustainable business governance, or simply a re-booting of the well-rehearsed (business) case for greater 'corporate social responsibility'? The authors examine the arguments and make a number of suggestions; amongst them, a proposal that would see the development of a new legal form – a stakeholder company – that is tailored to the needs of mission-led businesses to support their growth.

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1. Introduction

Competition is at the core of capitalism, but the effects of so-called free market capitalism over the last thirty years and particularly since 2010 have been to suppress true competition in many respects. Rent-seeking[2] has been rewarded rather than labour, markets are dominated by oligopolistic multinationals and pricing has become increasingly opaque. Over time, the impact of these distortions has escalated, such that even many proponents of capitalism see the threat it is now posing to itself if it continues unchecked. The pursuit by corporations of profit maximisation as the overriding goal and the short termism encouraged by measuring this on a quarterly basis have been identified as drivers of these problems.[3]

Explicitly embedding the social and environmental mission of a business into its governing document and then reporting performance against this regularly has been suggested as a potential solution to, or amelioration of at least, these issues. This was one of the recommendations of an advisory panel set up by the UK government in 2016 to review mission-led business.[4] It was also one of the proposals in the policy report of the Big Innovation Centre on The Purposeful Company published in February 2017.[5] The UK government has acknowledged this as an issue meriting attention. Prime Minister Theresa May has spoken more than once of her intent to establish a more inclusive economy and a fairer society[6] and her government has published not one, but two Green Papers on the theme of corporate governance,[7]along with a response flowing from those consultations[8]. Britain's departure from the European Union, the geopolitical tremors induced by the United States' choice of President and the Prime Minister's own vulnerability following the 2017 general election may combine to deflect

[2] P. Frase, *Four Futures: life after capitalism* (Verso, 2016)

[3] *The Kay Review of UK Equity Markets and Long-Term Decision Making*, Final Report, June 2012, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/253454/bis-12-917-kay-review-of-equity-markets-final-report.pdf

[4] *On a Mission in the UK Economy: Current state of play, vision and recommendations from the advisory panel to the Mission-led Business Review 2016*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574694/Advisory_Panel_Report_-_Mission-led_Business.pdf

[5] Big Innovation Centre, *The Purposeful Company Policy Report,* February 2017, available at: http://biginnovationcentre.com/media/uploads/pdf/TPC_Policy%20Report.pdf

[6] Cf. for example, https://www.pioneerspost.com/news-views/20161011/new-inclusive-economy-unit-created-british-government and https://www.gov.uk/government/speeches/the-shared-society-article-by-theresa-may

[7] Department for Business, Energy and Industrial Strategy, 'Corporate Governance Reform Green Paper', https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584013/corporate-governance-reform-green-paper.pdf and H M Government, 'Building Our Industrial Strategy', https://beisgovuk.citizenspace.com/strategy/industrial-strategy/supporting_documents/buildingourindustrialstrategygreenpaper.pdf

[8] Department for Business, Energy and Industrial Strategy, 'Corporate Governance Reform: The Government response to the green paper consultation', available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/640631/corporate-governance-reform-government-response.pdf

that attention, but it remains a matter of economic and cultural significance, to the country and beyond.

Our objective in this paper is to engage critically with these developments, but also to consider how, particularly in our role as lawyers, we may contribute practical solutions and proposals for implementing some of the key changes in our corporate (legal) landscape that some of these recent policy initiatives point towards. To that end, we concentrate our discussion on the mission-led business review (the Review) as an initiative that encouraged concrete recommendations for change. In April 2016, the UK government initiated the Review by setting out three broad objectives. First, it sought to gather data on the role of mission-led businesses in the economy, establishing how big a part of the economy this sector is, and what barriers to growth exist. Secondly, it aimed to generate a 'vision' that would shape the potential role of these businesses in the UK economy. Finally, the review encouraged the development of concrete recommendations on what industry and government might do to better support mission-led businesses.[9]

The government set up an advisory panel and ran a public consultation and, seven months on, the panel reported back to the government with its recommendations.[10] The timing of this process is interesting. The Review commenced when David Cameron was still Prime Minister, before the UK's Referendum on EU membership and the 2016 US election, but the publication of the panel's findings came after those events had demonstrated a clear sense of public discontent with the status quo.

Notable, too, is the composition of the panel itself. Having described mission-led business as a 'particular part of the social economy' in its call for evidence[11], we might have expected the government to invite onto the advisory panel some key players in the social economy, from existing social or cooperative enterprises. Instead, it selected a group of ten industry experts, many of them with affiliations to mainstream commercial businesses including some large household names.

This highlights a tension that marked the Review's scope and design from the outset, raising the question of what actually was under review and why. The composition of the panel suggested not only that its focus was not the established social economy, but that there was not much to learn from it. The brief that came from the Minister of Civil Society clearly suggested that its focus would be on the development of mission-led business as an emergent form in the social economy – in other words, on new ways for 'transitional' companies to operate with an increased emphasis on social mission. As we shall see, the panel itself presented an ambitious vision for mission-led business and its relevance for the general economy. The government, however, has not yet given any clear signal as to whether it is prepared to take some of the more ambitious recommendations forward in a substantive way. The only explicit reference to the Review in the government response to the Green Paper consultations was: 'This reform package will complement wider work that the Government and others

[9] H M Government, Cabinet Office, 'Mission-led Business Review: Call for Evidence', available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521927/Mission-Led_Business_Review-Call_for_Evidence.PDF p. 2

[10] Department for Digital, Culture, Media & Sport, Press Release, available at: https://www.gov.uk/government/news/building-a-country-that-works-for-everyone-independent-panel-publishes-report-on-putting-values-at-the-heart-of-our-businesses

[11] H M Government, Cabinet Office, 'Mission-led Business Review: Call for Evidence', available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521927/Mission-Led_Business_Review-Call_for_Evidence.PDF p. 2

are undertaking to enhance public trust in business as a force for good and encourage corporate responsibility. This includes follow-up to the review of "mission-led" businesses (including work to encourage business with purpose and a prospective new business-civil society collaboration).'[12] The authors understand this work is proceeding in Whitehall, but it is something the government does not appear minded to shout about.

Our discussion of the Review, and some of these wider critical issues, proceeds as follows. In section 2, we briefly consider the unresolved issues in corporate governance, and underlying problems with capitalism, that many identify as lying at the heart of our current economic and political crises. These, we point out, are not new challenges but they are coming at us today with increasing urgency and provide the context for the Review and the various related initiatives currently progressing,[13] and for this paper. Section 3 introduces the concept of mission-led business and its implications for corporate governance, providing the basis for our critical analysis in section 4. Here, we trace some of the sceptical arguments raised by, amongst others, existing social enterprises, sometimes with long-standing experience in the social economy. Some of these point out that the Review's focus on business with purpose as a 'competitive advantage' is reminiscent of the well-established but, arguably, only marginally impactful CSR agenda that has allowed corporations to present themselves as good corporate citizens while continuing to focus on shareholders' financial to the detriment of other stakeholders.

Section 5, in contrast, highlights that the mission-led business agenda and other, similar contributions to the corporate governance debate, do seem to be pointing to an appetite for more substantive change which, depending upon how deep and wide this is, could lead to a potential paradigm shift. Sections 6 and 7 address questions of corporate legal form. While in section 6 we look at existing legal forms for mission-led businesses and social enterprises, in section 7 we offer a number of suggestions that would see the introduction of a new legal form with particular requirements regarding directors' duties, corporate purpose and reporting, that would allow mission-led businesses to set themselves apart from other mainstream companies. Section 8 acknowledges, echoing the advisory panel's approach, that legal reform cannot be seen in isolation. The likelihood of mission-led business becoming realised in a manner that has significant impact depends on many factors and involves many participants, including financial markets, corporate executives, their advisers and the government as well as research and academia. In section 9 we provide a brief conclusion and outlook.

2. Problems with corporate governance and capitalism

Concerns with corporate governance in the UK are not new. In the early 1990s, the Cadbury Committee was established at a time when the sudden collapses of Asil Nadir's Polly Peck, the Bank of Credit and Commerce International and the Maxwell Group had created widespread discontent and

[12] Department for Business, Energy and Industrial Strategy, 'Corporate Governance Reform: The Government response to the green paper consultation', p. 8 available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/640631/corporate-governance-reform-government-response.pdf

[13] E.g. www.bcorporation.uk; http://www.blueprintforbusiness.org/; http://www.biginnovationcentre.com/purposeful-company; http://www.aldersgategroup.org.uk/

distrust in corporate practices.[14] 1995 saw the Greenbury Report[15] on directors' remuneration in response to the public perception of executives of large corporations as 'fat cats' looking after 'number one'. Corporate governance was touched on again as part of the 2012 Kay Review of UK Equity Markets,[16] commissioned in response to the financial crash of 2008. What regulation has flowed from these reviews may have changed market practices to some degree, but clearly has not made those concerns go away.[17]

In fact, the post-crisis period has only magnified them as corporate irresponsibility and its deleterious effects appear to be 'scaling new heights', as Paddy Ireland remarks.[18] There is a widespread sense that business has lost the trust of the general public in the UK and beyond, as evidenced by the latest Edelman Trust Barometer.[19] It is easy to see how this has come about with the litany of corporate malpractices that include banks fraudulently selling payment protection insurance to their customers; supermarkets passing off horsemeat as other forms of food; Volkswagen engineering fake emissions figures; and the likes of Philip Green and Mike Ashley displaying contemptuous disregard for the effects of their actions on their employees. Such practices are offensive enough in themselves, but the way they have been received has been compounded by the lack of accountability in each case. The banks pay eye-watering fines without blinking; the supermarkets blame their supply chains (notwithstanding in most other respects they seem to exert draconian control over how those same supply chains operate); Volkswagen grudgingly apply a dilatory 'fix' to their polluting vehicles; and Green and Ashley continue to enjoy their millions. Little appears to change, embedding a culture of 'getting away with it' (or trying to) and the irresponsibility Ireland identifies.

The lack of trust in corporations and their governance intersects with a growing distrust too in the underpinning capitalist market system. It is rooted in the sense - and a sense, notably, beginning to be voiced by its erstwhile advocates - that capitalism is no longer an inevitable solution to the world's economic challenges, but may rather itself be part of the problem. The benefits of competition are no longer being felt as markets are dominated by a handful of mega-corporations; inequalities are escalating as the super-rich amass wealth whilst workers' wages stagnate; and the demands of perpetual economic growth drive consumption to levels that exacerbate climate change and resource depletion, creating dangerous positive feedback loops. To an increasing extent, the human element has been eroded from the economy, as data, algorithms and automation are relied upon to 'improve the numbers' for businesses.

The intersection of both debates – on corporate reform and on economic reform – provides the context for the Review. Those who call out the current economic system for its flaws, also often highlight the shortcomings of our dominant corporate governance framework, whose underpinning

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[14] Report of the Committee on the Financial Aspects of Corporate Governance (The 'Cadbury Report'), 1 December 1992, available at http://www.ecgi.org/codes/documents/cadbury.pdf

[15] *Directors' Remuneration: Report of a Study Group chaired by Sir Richard Greenbury*, 17 July 1995, available at: https://www.scribd.com/document/235133276/Greenbury-Report-1995-enhanced-version

[16] The *Kay Review*, above note 3

[17] See further N. Boeger and C. Villiers, 'Introduction', in *idem* (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity* (Hart, 2018, in press)

[18] P. Ireland, 'Corporate Schizophrenia: the institutional origins of corporate social irresponsibility' in N. Boeger and C. Villiers, (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity* (Hart, 2018, in press)

[19] *2017 Edelman Trust Barometer*, available at: https://www.edelman.com/trust2017/

liberal economic theory (foremost, the focus on shareholder value as a driver for economic efficiency) is a manifestation of that system. Some cheerleaders of capitalism are astute enough to recognise that it is not a perfect system, although they are committed to it as being the optimal one available. They recognise fine tuning of the current model is necessary to prevent the escalation of problems seen in recent years, undermining future support for (and indeed the functioning of) capitalism as we have come to know it. There is an ideological impetus that sees that pursuit of profits to the exclusion of all else is ultimately self-defeating and that this needs to be moderated to avoid capitalism sowing the seeds of its own collapse. Purpose potentially provides that moderating effect. Partly, at least, this would seem to be behind the government's engagement with the issue since Theresa May came to office.

It is also interesting to note the echoes of her stance in recent UK political history. In 1996, as part of his push to become Prime Minister, Tony Blair was talking of 'stakeholder capitalism'; Gordon Brown put co-operative and mutual ideals at the heart of his 2010 manifesto; David Cameron, as Prime Minister in 2102 spoke of a 'popular capitalism' while his own business secretary, Vince Cable, preferred 'progressive capitalism' and the then Leader of the Opposition, Ed Miliband, was advocating 'responsible capitalism'. It is clear from this that, politically, there is a broad recognition that some moderation of capitalism is desirable. It is even clearer that to date there has been a lack of confidence and leadership necessary to translate words into actions in any meaningful way on this issue. The sense is the politicians are more interested in tuning into and following the zeitgeist, rather than driving it. This does not mean that they will not play an important role in effecting change, but the impetus for it is likely to come from elsewhere.

3. What is mission-led business?

Phrases such as 'doing well by doing good'[20], 'business as a force for good'[21], responsible capitalism[22], inclusive capitalism[23] and, most recently, the 'inclusive economy'[24] all point to a growing recognition from elements of the mainstream commercial, financial and political spheres that there is more to being a successful business than maximising the bottom line at any cost. The principles behind these ideas are certainly not new; some of them reach back decades.[25] Our interest here lies in how the Review, by introducing a focus on mission-led business as a specific concept, creates an opportunity to engage meaningfully with what these principles could mean in practice now.

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[20] McKinsey, *Doing well by Doing Good: a leaders' guide*, September 2013, available at: http://www.mckinsey.com/industries/social-sector/our-insights/doing-well-by-doing-good-a-leaders-guide

[21] *A Blueprint for Better Business*, at: http://www.blueprintforbusiness.org/

[22] E. Miliband, 'What responsible capitalism is all above', *The Guardian*, 22 May 2013, available at: https://www.theguardian.com/commentisfree/2013/may/22/google-corporate-responsibility-ed-miliband-speech

[23] *Coalition for Inclusive Capitalism*, at: http://www.inc-cap.com/

[24] *United Nations Development Programme*, at: http://www.undp.org/content/undp/en/home/blog/2015/7/31/What-does-inclusive-economic-growth-actually-mean-in-practice-.html; Department for Digital, Culture, Media & Sport, Press Release: 'Government announces Inclusive Economy Unit', available at: https://www.gov.uk/government/news/government-announces-inclusive-economy-unit

[25] E.g. E. F. Schumacher, *Small Is Beautiful: A Study of Economics as if People Mattered* (Vintage, 1993 (originally 1973)); P. Hawken, *The Ecology of Commerce: A Declaration of Sustainability* (Revised Edition, Harper Business, 2010); J. Elkington, J. *Cannibals with Forks: The Triple Bottom Line of 21st Century Business* (Capstone, 1999); J. Porritt, *Capitalism as if the world matters*, (Earthscan, 2005)

The advisory panel begin their report on the Review with a definition of mission-led businesses as 'profit-driven businesses that make a powerful commitment to social impact' and that serve an 'ethos to contribute to society through their operations, goods and services.'[26] In addition, the panel set out three specific characteristics of mission-led businesses namely, first, a commitment to transparently delivering a positive social and environmental impact; secondly, an understanding that parties beyond shareholders have a legitimate interest in outcomes of the business; and thirdly, a recognition that value can be delivered sustainably by broader engagement with stakeholders.[27]

The panel's understanding of mission-led businesses broadly mirrors what Brakman Reiser terms a 'dual mission' enterprises.[28] On the one hand, they are committed to making and distributing profits for their shareholders to satisfy their need for capital investment. The latter – the freedom to distribute profits – is what in principle distinguishes mission-led business from social enterprises as they are conceived in the wider UK policy context, (being firms that reinvest most of their profits back into their business for a social purpose). It suggests that mission-led businesses are more commercially oriented, and less likely than social enterprises to accept constraints on, for example, their ability to declare dividends or access loan finance.

However, reflecting the other side of their 'dual mission', these businesses are also committed to social impact and in this respect, they are categorically different from traditional corporate businesses that are run for shareholder value. At its heart, mission-led business signifies a shift from the supremacy of shareholder interest, and the quarterly measurement of how this is delivered in financial terms, to a more balanced assessment of the impact of a business' activities across its stakeholders, assessed in the medium to long term. A non-exclusive list of such stakeholders will typically include (in addition to, not instead of, but alongside the shareholders) staff, customers, suppliers, investors, the communities in which the business operates, the environment it relies upon, the state that guarantees stable conditions in which to exist and future generations, who may determine the longevity of the business. The common thread among each of these stakeholders, of course, is that they are people, grouped in various ways or, in the case of the environment, something essential for the health and wellbeing of people. Thus mission led business necessitates engagement with the impact of a company on people, rather than merely share price, as a measure of success.

4. A CSR re-boot?

The philosophical distinction around the application of surpluses generated by the business explains many of the reservations that some in the social enterprise world have with the mission-led business concept. They point in particular to the advent of corporate social responsibility (CSR), which started out from similar principles of recognising the external impacts of commercial organisations, but has often been diverted into an activity for the marketing department and has led to accusations of 'greenwash'.[29] Despite what may have been good initial intentions – and pockets of good corporate practice – the general perception of CSR is of a marginal activity regarded as supporting branding and communications, rather than something culturally fundamental to businesses. The concern is mission-

[26] *On a Mission in the UK Economy*, above note 4, p. 8
[27] *Ibid.*
[28] D. Brakman Reiser, 'Blended Enterprise and the Dual Mission Dilemma', (2011) 35 *Vermont Law Review* 105-116
[29] N. Boeger, R. Murray and C. Villiers (eds.), *Perspectives on Corporate Social Responsibility* (Edward Elgar, 2008); P. Fleming and M. T. Jones, *The End of Corporate Social Responsibility: Crisis and Critique* (Sage, 2013)

led business will just be the next iteration of this, perhaps more dangerous if it is given legislative legitimacy, and providing a further shield of apparent benign intent behind which corporates continue 'business as usual' (which, after all, has been one of the more ubiquitous mantras in the post-crash economy).

Others, particularly some who have worked tirelessly to build the social enterprise and social investment sectors over the last twenty years are concerned that, over time, even if businesses are set up with the best intentions, when conflicts between purpose and profit inevitably arise, those owning and running them are likely to default to a position where they give greater weight to the latter. However, they will still have the benefit of the perception of being 'good businesses'. Meanwhile, truly non-profit distributing (or restricted profit distribution) enterprises may well find attracting finance increasingly difficult and the market conditions perhaps even tougher, notwithstanding they are the best placed to claim to be genuinely mission-led.

The panel's own framing of mission-led business has fanned some of these concerns. It very clearly roots mission-led business in the existing economic paradigm of this being a pragmatic way to achieve commercial success and, specifically, greater and speedier growth in an increasingly uncertain, complex world. This is evident in the language of its report, where the panel talks of mission-led businesses making 'a significant contribution to UK growth over the next ten years', and such businesses being 'primed for success'.[30] Referencing various reports that highlight the interconnection between corporate growth and social impact (and between financial and social value), the panel states there is growing evidence that taking this approach gives businesses a competitive advantage through improved performance, increased staff retention and greater customer loyalty.[31] Whilst it may be the case that this language is used with the intent of 'not scaring the horses' and to secure engagement from the mainstream corporate community, it brings with it the danger that the underlying culture remains unaffected and the changes introduced are regarded as matters of compliance and CSR branding still.

The advisory panel does draw a distinction between CSR and the mission-led business agenda, stating the latter promotes businesses that have social impact or value hardwired into their constitution and governance model, whereas the form considers these matters as part of a voluntary corporate (marketing) policy. Referencing a report from Deloitte, the panel acknowledges that businesses are moving away from an '"offset" model with specific resources allocated to [CSR], to a broader agenda under which social impact is integrated across the business and seen as driver for value.'[32] Yet as much as the panel reassures us of a move beyond CSR, its framing and the language it deploys are strikingly similar to those that have come to define CSR. The focus is primarily on the commercial opportunity in anticipating the pendulum swinging back to a more socially responsible form of business operation. This is purpose as business case; a means to be more successful as a company, as measured by the established metrics. It is not an isolated view but one shared increasingly through fora such as the

[30] *On a Mission in the UK Economy*, above note 4, p. 3
[31] *Ibid.*, p. 5
[32] *Ibid.*, p. 9

Aldersgate Group[33], Blueprint for a Better Business[34] or The Purposeful Company.[35] Like the advisory panel itself, these institutions all contain individuals who are, reassuringly for the mainstream, serious and successful capitalists.

Referencing Deloitte, the panel states that there are currently around 123,000 UK mission-led businesses, which have a combined turnover of £165 billion and employ 1.4 million people.[36] These might be surprising numbers given this is a new concept for many people. Many may be surprised, too, by the belief espoused by the advisory panel that 'by 2026 all UK businesses will have a mission that includes serving society and the environment. The most successful businesses will be those that manifestly deliver on that mission.'[37] Some may focus on the undeniable ambition of the word 'all'. Others may point out that 'includes' could cover a vast spectrum of intent, not all of it benign to all stakeholders. Yet others may remark that the presentation of flexible and broad ambitions with a promise of more responsible business practices is exactly what we have seen for decades with CSR, with little tangible impact.

5. A paradigm-shift?

Looking through a more optimistic lens, a desire for change in corporate practice evidently exists among a variety of diverse constituencies. The panel observe 'a new social contract developing between business and society, in which businesses engage with stakeholders beyond their current narrow remit to create benefits for employees, citizens and society at large.'[38] It is on the back of this social contract that the panel present their ambitious vision foreseeing that in the next decade, *all* UK businesses will be incorporating a social mission into their corporate governance.[39] In fact, as the panel observes quite rightly, these are debates that clearly 'go beyond the initial remit of the Review.'[40]

This suggests that something more than a rebranding of the CSR moniker is going on, and there exits an opportunity for approaches in corporate governance to drive change in more fundamental ways. A genuine balancing of stakeholder interests on a habitual basis, across a sizeable proportion of the business community, would mean over time greater weight being given to social and environmental issues to a degree which could have a profound effect, not just in commercial terms but culturally also, as attitudes and behaviours change not just in the board rooms, but with those that are affected by them. This is perhaps a more ambitious vision of what may emerge from the observation of the panel that mission-led businesses today 'operate across diverse markets and sectors and it is hard to describe them as a stand-alone sector in the economy.'[41]

Mission-led businesses may be regarded, we have seen, as being 'profit with purpose' entities, distinct from traditional social enterprises which are 'profit for purpose'; the difference in emphasis being that

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[33] *Aldersgate Group: Leaders for a sustainable economy*, at http://www.aldersgategroup.org.uk/
[34] *A Blueprint for Better Business*, at: http://www.blueprintforbusiness.org/
[35] *Big Innovation Centre: The Purposeful Company*, at: http://www.biginnovationcentre.com/purposeful-company . The Purposeful Company Task Force for example frame the rationale for nurturing purposeful companies to be 'so that the UK can deliver the productivity growth on which living standards across all regions depend.' See Big Innovation Centre, *The Purposeful Company Policy Report*, above note 5, p. 6
[36] *On a Mission in the UK Economy*, above note 4, p. 10
[37] *Ibid.*, p. 31
[38] *Ibid.,* p. 3
[39] *Ibid.,* p. 31
[40] *Ibid.,* p. 15
[41] *Ibid.*, p. 8

the former have no qualms about levels of profit earned and private benefit arising from that, provided it is a by-product of delivering the corporate mission, whereas the latter recycle any profits to increase their purposeful impact. Despite certain reservations, many in this space would recognise that diluting the emphasis on shareholder profit and a greater focus on stakeholder interests has the potential to have a positive societal impact at a scale beyond the reach of solely non-profit distributing organisations. The panel's focus on profit and purpose may be reassuring for those business leaders and investors who, on the one hand, are still wedded to many of the principles picked up on their MBAs, but whose lived experience increasingly indicates something rotten in the state of Denmark; something that requires more than CSR but does not discard those principles entirely.

This appears to be the aim of the mission-led agenda. As we have set out above, it relies heavily on commercial incentives and many of those driving it are committed and successful capitalists, so nobody should be under any illusion that it is, at this point in time, setting up a blue-print for radical corporate reform. Yet, we are seeing something of a corporate movement,[42] driven by progressive attitudes (as well as commercial - and political – pragmatism) that recognises that business as usual cannot be an option for corporate governance and practice in the twenty-first century.

Of course, the likelihood of this becoming realised in a manner which has significant impact depends on many factors. Not least among these will be the government's response to the Review. The attitudes, too, of the various agents in the economy will also be critical and already, through the process of the Review, a range of opinions has emerged.[43] There remains resistance to this agenda in several constituencies, as well as doubts as to whether the level of commitment that exists among proponents is sufficient to effect the necessary change. What has been rightly recognised as critical, by both the advisory panel and others,[44] is the need for a range of complementary interventions, affecting the legal framework for businesses, but also in areas such as the investment industry, academia, advisory practice and accounting and reporting, to build the ecosystem in which companies which do seek to be purposeful may flourish. Changes to corporate governance will not succeed in isolation unless they are part of a wider package that embraces some, at least, of these matters also. The advisory panel makes ten recommendations covering a variety of areas, wisely recognising, in so doing, the importance of making many interventions across the system in order to effect change, rather than proffering a magic bullet.

In discussing how these questions might be taken forward, it is acknowledged there are those who don't believe such changes are necessary or desirable. Practical challenges have been identified by some, who see difficulties for directors and investors in taking decisions where the interests of multiple stakeholders have to be balanced, as opposed to enjoying the relative simplicity of pursuing the single goal of profit maximisation for shareholders.[45] Others reject the need for (legal) intervention

[42] N. Boeger, 'The New Corporate Movement, in N. Boeger and C. Villiers (eds.), *Changing the Corporate Landscape: towards corporate reform and enterprise diversity* (Hart, 2018, in press)
[43] Mission-led business consultation responses, available (in zip file) at: https://www.gov.uk/government/consultations/mission-led-business-review-call-for-evidence
[44] E.g. Big Innovation Centre, *The Purposeful Company Policy Report*, above note 5
[45] There is an irony here, of course, in that company directors have been some of the best paid people over recent decades, their salaries justified in no small measure by the complexity of the decisions they have to take. Is the inference they may not be up to the job if it becomes more complicated, or is there an aversion to the further irony that part of that balancing of interests may mean reducing the gap between highest and

in principle and argue that corporations are free now to act as mission-led businesses in the manner defined by the advisory panel. They are permitted within current legislation to act in this way and those that wish to take advantage of this do so. The fact they are few in number is simply a product of market forces which should be respected and not interfered with. All businesses are mission-led; it is just that the mission of the vast majority is to optimise the profits they make for their shareholders. 'Nothing to see here, move right along,' is the dismissive tone. Despite these examples of scepticism, however, both the levels of engagement around the issue currently and the broad enthusiasm of the panel having conducted the review suggest there is value in addressing how the potential may translate in practice.

6. Mission-led business and corporate legal form

One may question whether mission-led business is a useful categorisation in legal terms, given many businesses that can legitimately describe themselves as mission-led already exist. Generally, they are recognised as social enterprises. They often take the form of community interest companies, community benefit societies and, increasingly, certain charities. A common feature to all is that both their mission and their assets are 'locked in' through a combination of their constitution and regulation. The mission for the first two has to be for the benefit of a defined community and the last has to be for public benefit and pass as a charitable purpose. The asset lock ensures that the assets of the company can only be applied for the intended purpose and not for private benefit. As such, they are regarded as not for profit organisations (although in practice the more successful do make surpluses, but reinvest them to further their mission).

It is the asset lock that has proved problematic for some entrepreneurs, who may have a genuine intent to do good through business activity, but a reluctance to make the considerable personal commitment required to establish a successful business without the opportunity for commensurate financial reward. Often, currently, they use a traditional limited company form and rely on their own ability to control what the company does to adhere to that original mission. Sometimes this plays out in practice, but it can mean certain sources of finance, for example from social investors or charitable foundations, are unavailable to them due to concern with the potential scope for private benefit to arise. Problems can also emerge when the founder moves on, or other investors takes stakes in the entity, and that original benign intent becomes diluted, or forgotten, or overridden.

Co-operatives and mutual societies offer another, distinctive, form of mission-led business.[46] With a history stretching back to the mid-nineteenth century and an international movement boasting significant contemporary operations such as *Mondragon* in Spain, *Cecosesola* in Venezuela and *The Phone Co-op* in the UK, co-operatives provide reminders both that little is truly new in this world and also that alternative, mission-led approaches can be successful. The extent to which they are regarded as a niche sector of the economy, however, shows how far we have moved away from thinking of collaborative models of enterprise as a standard approach to business.

In addition to these existing, but not widely adopted legal forms, it is possible under curent legislation to create a bespoke model which builds mission into the constitution of any company. This can be

lowest paid, so some may see pressure on their salaries, just at the time they may be asked to exercise their skills and judgment in more thoughtful and nuanced ways?

[46] E. Mayo (ed.), *The Co-operative Advantage: innovation, co-operation and why sharing business ownership is good for Britain* (Cooperatives UK, 2015)

accomplished without also including an asset lock. It is anticipated as an option by section 172 (2) of the Companies Act 2006 (the Act)[47] which contains the phrase, 'where or to the extent that the purposes of the company consist of or include purposes other than the benefit of the members.' Some companies have taken advantage of the flexibility this highlights, for example *Big Society Capital*, *Social Stock Exchange* and *Social Finance*. However, these are particular types of organisations, with a clear social purpose, whereas what the advisory panel, and the vast majority of active participants in the current debate around mission-led business, are focused on is more typical trading entities framing their decision making and activities by reference to their mission. Here, the question arises whether section 172 in its current form is suitable to offer enough flexibility to achieve this, though experience indicates the more relevant question is how may businesses be persuaded to use the flexibilities within the legislation, whether as currently drafted or amended in the future?

At this point, it is worth pausing to reflect both upon how the wording of section 172 came into being and its impact in the subsequent decade. In promoting the Act, the government was clear that the purpose behind the legislative provision was to codify the concept of 'enlightened shareholder value'; that is, the interests of the members of the company having primacy, but there being a recognition that members may benefit from wider stakeholder interests being taken into account in the decision making of a company's board. This was distinct from what was described in the parliamentary debates as the pluralist approach, which essentially argued for greater parity to be given to stakeholder and shareholder interests.[48]

Since the introduction of the Act, there has been little discernible change in the attitudes or behaviours of company directors or companies.[49] *Pro forma* company board minutes have been adapted to make reference to section 172, such that it is common to see statements in minutes that are variants of 'the board, having had regard to the matters outlined in section 172(1) of the Companies Act 2006, resolved …'. The duty to '*promote the success of the Company for the benefit of its members as a whole*' has been taken to mean act in the interests of the shareholders, which in turn has been interpreted as maximise financial return for shareholders and scant evidence of enlightenment.

There is a cultural aversion among many in the corporate world to regulation, and there is evidence that attempts to regulate can stimulate box ticking compliance behaviours. However, as the legislation has not had the effect of encouraging wider stakeholder-oriented corporate practice, it seems further steers are required to drive the desired approach. It may be that a distinction is appropriate to establish a baseline of engagement with the impact of a business' activities on its stakeholders, which is the minimum expected of all companies, and a higher standard applying to self-declaring mission-led businesses who, in return for delivering to that higher standard, receive financial benefits (maybe in the form of tax reliefs or subsidies, to reflect the lower external costs their behaviours place on other parts of the economy or society).

[47] Companies Act 2006, section 172, available at: https://www.legislation.gov.uk/ukpga/2006/46/section/172

[48] See Hansard, House of Commons Debate 17 October 2006, volume 450, column 765, available at: https://publications.parliament.uk/pa/cm200506/cmhansrd/vo061017/debindx/61017-x.htm

[49] See also G. Tsagas, 'Section 172 of the Companies Act 2006: Desperate times call for soft law measures', in N. Boeger and C. Villiers (eds.), *Changing the Corporate Landscape: towards corporate reform and enterprise diversity* (Hart, 2018, in press)

This would require a business judgement of the directors in each case, exercised in good faith and taken with the approval of the shareholders, but it would be one framed differently, with different expectations. This potentially addresses some of the concerns voiced during the parliamentary debate of the Act[50] – that it should not be for parliament to dictate to directors how they should act – whilst providing the impetus to shift them towards an approach focused more on the purpose of the company than the narrow financial interests of its members and a recognition that whilst there is overlap, there is also a distinction between these two drivers.

It is a moot point whether the lack of change in corporate practice following the Act was to any degree intended or not, but there is certainly a history of unintended consequences flowing from legislative attempts to shift behaviours, a relevant recent one here being the attempt to address escalating executive pay leading to the bonus culture which has made it yet more extravagant.[51] Hence, any attempt to introduce a new legal form for mission-led businesses would need to pay careful attention to the ongoing requirements on companies at large and not create any explicit or implicit expectation that the existing section 172 and related duties should be diluted or disregarded if a company was not formally a mission-led business.

The lessons to be drawn from all this, we would suggest, are that leaving the legislation as it is will do nothing to change corporate practice, but legislative changes which are merely permissive are unlikely to drive the desired changes in corporate practice either. On the other hand, legislative changes which are directive will not have the desired effect in isolation, without other complementary changes being introduced to create a more supportive ecosystem in which mission-led businesses may operate. Thus, we will consider some prospective legislative changes in the next section, before touching on other possible interventions that may assist.

7. Some proposals on legal form

Notwithstanding the existence of social enterprises and the handful of legal forms available to them, there appears to be a case for a new model to encourage and enable mission-led businesses to be easily identifiable and to have clarity around what is expected of them. This is not, at this point in time, about a requirement for all businesses to be mission-led. Instead, the approach may be for the time being to make it both easy and desirable for new and existing businesses to become recognisably mission-led. This might be achieved, in terms of convenience, by introducing simple changes to their constitution, governance and reporting arrangements; and, in terms of incentivisation, through tax reliefs, for the company itself and those that invest in it, at least in the initial stages. The aspiration would be that, over time, the number and profile of mission-led businesses would increase to the point at which the question became not 'why become a mission-led business?' but 'why not?'.

Looking at the detail of the current statutory requirements for companies, we consider here some possible changes to differentiate mission-led businesses. In doing so, we reference the example of B

[50] See Hansard, House of Commons Debate 17 October 2006, volume 450, column 772, available at: https://publications.parliament.uk/pa/cm200506/cmhansrd/vo061017/debindx/61017-x.htm

[51] The Cadbury Report (above note 14) recommended closer alignment between the performance of a company and executive pay. Over the years, this has led to increasing focus on the aspects of performance, particularly share price, which trigger bonuses for executives, exacerbating the issue Cadbury was attempting to address.

Corps and their accreditation, which began in the United States in 2007 and reached the UK in 2015.[52] Broadly speaking, the accreditation process involves the company completing, at least every two years, a social impact assessment, and making certain changes to its constitutional documents to reflect its commitment to its wider stakeholders and the environment. The certification is issued by B Lab, an international non-profit organisation, and it also involves payment by the company of a fee to the organisation for its certification and assurance services.[53]

The B Corp is by no means the only approach to mission-led business which exists, but the motivations of those in the movement appear to focus on the alignment of profit and purpose which is echoed by many of the advocates for mission-led business. As recognised by the advisory panel, the B Corp movement offers some lessons in terms of possible implementation approaches in a variety of respects. B Lab itself is also behind the introduction of the Benefit Corporation model, a legal form for profit-with-purpose organisations which exists now in 32 US States.[54] A similar model also has been adopted in Italy in the form of the *Societa Benefit*, and is being actively considered in Argentina, Colombia and Australia.

While these are useful examples, there is no need to adopt the Benefit Corporation nomenclature, and the underlying principles can be adapted to suit local circumstances. It may be that a new legal form in the UK could reflect some of those principles but, depending upon the emphasis that lay behind its introduction, it might be called, for example, a Stakeholder Company. The B Corp accreditation process provides practical lessons in terms of the impact of making changes to governance arrangements and in measuring performance of corporations in practice. In either case, it will be important to strike the optimal balance between establishing something meaningful in terms of quality assurance, without creating something that will deter all but the most ardent proponents. We have this balance in mind in considering questions of governance, purpose and reporting below.

Directors' duties

In the UK, B Corps are expected to adhere to a form of words which closely follows, but provides clarification to, the current section 172 wording. The intent behind this was both to avoid discrepancies arising between internal constitutional commitments and external statutory ones, and to support the argument that this is consistent with what is currently permissible. There is scope to explore whether it goes far enough and whether, particularly given the lack of change in practice following the Act, such similar wording to section 172 would have a material impact this time around. The three main areas of contention we see here are discussed briefly below.

The description of the interests of the company and its alignment with those of shareholders

Section 172 requires a director to promote the success of the company for the benefit of its members as a whole. This is finessed by B Corps with the addition of 'through its business operations to have a material positive impact on society and the environment, taken as a whole.'[55] Whilst the additional wording is constructive, in terms of identifying a company explicitly as mission-led we question

[52] D. Hunter, 'The Arrival of B Corps in Britain: another milestone towards a more nuanced economy?', in N. Boeger and C. Villiers (eds.), *Changing the Corporate Landscape: towards corporate reform and enterprise diversity* (Hart Publishing forthcoming)
[53] *B Corporation*, at: www.bcorporation.uk
[54] *Benefit Corporation*, at: http://benefitcorp.net/; R. Alexander, *Benefit Corporation Law and Governance: Pursuing Profit with Purpose* (Berrett-Koehler, 2017)
[55] http://bcorporation.uk/become-a-b-corp/how-to-become-a-b-corp-uk

whether the association between success and member benefit should also be challenged. An alternative approach would focus not on shareholders or members, but on the long-term health of the company, which becomes management's primary concern. In such an alternative 'company-centred' model,[56] the stated purpose of the company and how the interests described in section 172 (1) have been taken into account offer new potential benchmarks against which to analyse the performance of the company. This would highlight the company directors' role not as the agents of shareholders (or any other stakeholders), but as a fiduciary of the *company's* best interests.[57]

The relationship between shareholders and other stakeholders

As currently stated, the Act requires directors to have regard to those matters listed in section 172 (1), but in the context of the primary duty to promote the success of the company for the benefit of the members. The addition in the governance documents of B Corps is to state that a director 'shall not be required to regard the benefit of any Stakeholder Interest or group of Stakeholder Interests as more important than any other' (a Stakeholder Interest being any of the matters referred to in section 172 (1)).[58] This however does not address the question of whether the interests of shareholders are to be treated as equivalent to any other stakeholder Interest, and so leaves their primacy intact. If the intent is to create a new category of Stakeholder Company (or similar), we argue this relationship must be challenged. It should be made explicit that the interests of all stakeholders are to be treated with equivalence, for example by amending the current section 172 (1) (f) to read 'the need to act fairly as between stakeholders of the company.'

The responsibility of directors for their actions

To the best of our knowledge, no director has been found to be in breach of section 172. Notwithstanding this, the required drafting for B Corps includes the following provision for their articles of association: 'Nothing in this Article express or implied, is intended to or shall create or grant any right or any cause of action to, by or for any person (other than the Company).'[59] The intent here is evidently to give directors comfort that where they are entering into this new world of more nuanced decision making, balancing myriad stakeholder interests rather than simply having regard to them in the context of furthering shareholder interests, they will not inevitably be on the receiving end of a litigants' jamboree. This is perhaps understandable, particularly in the context of an international movement sensitive to more litigious behaviours in other jurisdictions. The concern, however, is that if an equivalent provision were included in relation to all mission-led businesses, their directors may feel less inclined to behave consistently with the new requirements if there are no consequences for not doing so. Shareholders could bring claims, if this approach was followed, but the prospect of them doing so seems remote where the directors have acted more forcefully in their interests than might be technically be necessary.

Overall, our view is that some remedies are required where directors act in breach of any new duties. These could distinguish between bad judgment and bad faith, but should be considered as part of the

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[56] J. L. Bower, L. S. Paine, S. Cliff and D. Barton, 'The Error at the Heart of Corporate Leadership', *Harvard Business Review*, May-June 2017 (Managing in the Long-term), available at https://hbr.org/2017/05/managing-for-the-long-term#the-error-at-the-heart-of-corporate-leadership

[57] *Ibid.*

[58] B Corporation, 'How to Become a B Corp', available at: http://bcorporation.uk/become-a-b-corp/how-to-become-a-b-corp-uk

[59] *Ibid.*

wider package of shifts to encourage mission focused corporate practice. One possible approach in this regard may be to adopt what in UK law is known as the *Wednesbury* reasonableness test that applies to those in public office.[60] In other words, provided directors could demonstrate they had acted reasonably in the decision-making process, then they would not be regarded as being in breach of their duties to the company.

In addition, the ability to challenge decisions could be restricted in ways similar to those that apply to judicial review to limit potential claims. This would in principle align with our approach suggested above, namely to re-frame the directors' role as fiduciary managers of the company, rather than economic agents (for members of the company). Thus, standing would only be granted to those with sufficient interest in the matter to which the alleged breach relates.[61] This would create the possibility of cases being brought where directors act unreasonably in balancing stakeholder interests in their decision making, but only by those who demonstrably have been adversely affected by their decisions. As with judicial review, it will be up to courts to interpret these tests further. Consideration would also have to be given to the access to information (such as board papers) applicable for stakeholders to enable them to assess whether directors have been acting reasonably and in line with the regulations, as currently the requirements on private companies are quite different to those for public bodies, and knowing what processes have been followed may need to be made easier to ascertain.

A further option may be to endow the Financial Reporting Council (FRC) with enforcement powers where directors were found to be in breach of this duty, as it already has in respect of statutory auditors. This is something the UK government resisted introducing in its response to the consultation on Corporate Reforms (despite the FRC indicating they would welcome an increase in these powers themselves) but it remains a potential option.

Statement of purpose

This leads into whether it should be a requirement for a company purporting to be a mission-led business to state their mission and to report on their performance in delivering that mission. This can be approached in several ways, not just in terms of whether and how a purpose is stated, but how it relates to the objects of the company more broadly and the directors' duties.

For example, the purpose might relate specifically to the activities of the company and the markets it operates in, or it may be more generic (eg to have a material positive impact on society and the environment taken as a whole). The relationship between that purpose and its wider objects (eg promoting the success of the company - whether or not for the benefit of the members) may be specified, giving one primacy over the other, or stating both should carry equal weight. References to treatment of stakeholders or responsible business principles might also be introduced.

Whilst mission statements may be associated with 20th century corporate culture and branding strategies (and trigger wariness as a result), our sense is that rather than trying to define to the nth degree what should or should not constitute a legitimate mission to be defined within a company's constitution, robust reporting requirements related to the mission and also custom and practice may

[60] *Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1947] EWCA Civ 1*
[61] Section 31 (3) Senior Courts Act 1981

be more effective in identifying truly mission-led businesses and distinguishing them from the uncommitted.

The Big Innovation Centre, in its Purposeful Company Policy Report, for example, appears unconcerned about a need to be prescriptive, recommending simply that companies should be required to make clear and precise statements of their purpose in their articles: new companies from the outset and existing companies by the end of a five-year transitional period.[62] It would be significant to measure companies not just against their self-proclaimed mission, but the related impacts in delivering that mission. So that if, for example, a commercial bank was to make its mission 'enabling people to own their own home', any reference to mortgages granted may also need statistics presented alongside that, addressing matters like levels of repossession and arrears, numbers of buy to let mortgages granted and other metrics which might reveal the shadow side to that bank's stated aim and the appropriateness, not merely the volume, of their lending practices.

The B Corp movement does not require a specific purpose to be stated, opting instead for the commitment to take stakeholder interests into account, to have an overall positive effect on society and the environment and to the Declaration of Interdependence. The last contains a series of statements of belief which are certainly distinct from what would be regarded as typical corporate practice today.[63] The benefit of such a generic approach is that a consistency can be achieved across markets, providing a public statement of a particular *modus operandi* that can act as a reference point to measure against where corporate behaviour is clearly inconsistent with this. It does not offer a specific mission for a specific organisation, although one could be added to what the B Corp approach offers. We regard a clear and specific statement of purpose potentially challenging, but desirable, especially when supported by good reporting (considered in the following section).

Reporting

The other related aspect of B Corp practice which is relevant, even critical, here is the bi-annual impact assessment. This measures the performance of B Corps against various criteria to ensure that they are sufficiently taking the social and environmental impact of their activities into account in decision making. It focuses on the various stakeholder interests, so is effective in casting light on how a business engages, for example, with its staff, customers and supply chain, and its relationship with the communities it operates in and its environmental impact. It is this, for example, that might expose a bank that earns poor customer feedback because it sells them products they don't need or has opaque charging structures; or that has huge discrepancies in pay among the highest and lowest earners. Extending this approach to embrace reporting on a company's stated purpose may enable further mission, or sector, specific analysis, such as whether there are any ethical considerations in the bank's lending practices.

The B Corp impact assessment is of course not directly part of a company's routine reporting cycle: it is an additional process and part of the accreditation by B Lab. Yet we see value in a similar, and similarly detailed, assessment to be embedded into the reporting requirements for mission-led

[62] Big Innovation Centre, *The Purposeful Company Policy Report*, above note 5, p. 26

[63] B Corporation, 'The B Corp Declaration', available at: https://www.bcorporation.net/what-are-b-corps/the-b-corp-declaration

businesses. We regard detailed reporting as critical to embed and illustrate best practice among mission-led business, giving substance to constitutional commitments to be mission led.

Even in the mainstream, investors and financial markets are increasingly welcoming more sophisticated and integrated non-financial reporting; reflecting a move within capital markets from a single concern (financial), through multiple discrete concerns (financial, social, environmental), to integration of reporting on them all. Company legislation has been adjusted[64] and supplemented by domestic and international guidance on integrated reporting,[65] although the effectiveness of these changes remains a much-debated issue for both academics[66] and practitioners.[67] The advisory panel for example observes that 'the tools currently available tend to be burdensome, expensive and inaccurate, especially for smaller businesses.'[68]

Nonetheless, at an event at Cass Business School in May 2017, Amelie Montchalin, Vice President for Policy and Foresight at AXA Group, spoke of the very significant and welcome change she was beginning to see in businesses moving away from reporting on the past to focusing on anticipating the future. This echoes the mantra of Canadian ice hockey legend, Wayne Gretsky, of 'skating to where the puck is going',[69] and the Theory of U developed by Otto Scharmer of MIT, which describes a process by which organisations and individuals can 'lead from the emerging future.'[70] This is potentially consistent with the motivation to embrace a mission led approach to achieve commercial advantage. It also speaks to the sort of cultural shift (from 'doing what we do because it is what we have always done' to approaching heightened uncertainty with greater openness and flexibility) that may prove necessary not only for business success but societal flourishing in the coming years and decades.

In addition to the legal requirement of a strategic report, the Act imposes specific reporting requirements on directors.[71] For mission-led businesses, these could be revised, in consistent manner

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[64] Sections 414A-C Companies Act 2006 (Strategic Report); Companies Act 2006 (Strategic and Directors' Reports) Regulations 2013; Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (the Nonfinancial Reporting Directive)

[65] Financial Reporting Council, *Guidance on the Strategic Report*, June 2014, available at: https://www.frc.org.uk/getattachment/2168919d-398a-41f1-b493-0749cf6f63e8/Guidance-on-the-Strategic-Report.pdf; *Global Reporting Initiative*, at: https://www.globalreporting.org/Pages/default.aspx; *International Integrated Reporting Council*, at: www.iirc.org

[66] R. G. Eccles and D. Saltzman, 'Achieving sustainability through integrated reporting', *Stanford Social Innovation Review Summer* (2011) 56-61; C. Villiers, L. Rinaldi, J. Unerman, 'Integrated Reporting: Insights, gaps and an agenda for future research' (2014) 27 (7) *Accounting, Auditing & Accountability Journal* 1042-1067; J. Flower, (2015) 27 'The international integrated reporting council: a story of failure', *Critical Perspectives on Accounting* 1-17

[67] PricewaterhouseCoopers AG, *Integrated Reporting: The Future of Corporate Reporting*, May 2012, available at: https://www.pwc.de/de/rechnungslegung/assets/integrated-reporting-die-zukunft-der-berichterstattung.pdf; Deloitte, *Integrated reporting: A better view?*, 2011, available at: https://www.iasplus.com/en/binary/sustain/1109integratedreportingview.pdf; KPMG, *What does an Integrated Report look like?*, June 2012, available at: https://home.kpmg.com/content/dam/kpmg/pdf/2013/04/what-does-ir-look-like.pdf

[68] *On a Mission in the UK Economy*, above note 4, p. 28

[69] J. Kirby, 'Why businesspeople won't stop using that Gretzky quote', *MacLean's*, 24 September 2014, at: http://www.macleans.ca/economy/business/why-business-people-wont-stop-using-that-gretzky-quote/

[70], O. Scharmer, *Theory U: Leading from the Future as it Emerges* (Berrett-Koehler, 2009)

[71] Sections 415-419 inclusive Companies Act 2006

with any other changes, such that company boards are required more explicitly to report on a yearly basis on – depending upon the nature of the changes introduced and any discretion around the extent to which a company commits to being mission-led – how stakeholder interests have been taken into account in significant decision making; how the company has followed responsible business practices; and how it has delivered on its mission. In each case, this would be more powerful where this was not merely a record of actions, but also illustrated the impact such actions have achieved.

8. Other interventions

Businesses are part of an eco-system. There are multiple actors with the ability to influence how businesses behave and plenty of potential interventions to encourage and enable mission-led business. As previously indicated, the panel's report contained ten recommendations proposing diverse interventions across this system in order to effect change. These ranged from the government's role in encouraging mission-led business, to changing legal and governance frameworks, to ensuring that advisory firms commit to better serving these businesses. Our discussion thus far has focused on questions of legal form, but we also regard these other matters as integral to any reform process. In this section, we seek only to illustrate the variety of participants who might have a beneficial effect on establishing a culture of mission-led business; some examples of what their interventions might look like; and why there is reason to be hopeful that some of these, at least, might positively influence future business practice.

Financial markets

The expectations of the financial markets is one of the most commonly cited inhibitors of businesses from adopting long (or even medium) term perspectives and assessing their wider impact on stakeholders. Yet increasingly, influential voices are advocating for change. Larry Fink, the CEO of BlackRock, which invests $3 trillion and manages a further $9 trillion, wrote in his 2017 new year letter to investors of the need for corporations to report more on their future strategy (rather than past performance), to resist pressure to focus on short term results, and of the debilitating effect of increasing inequality on economic performance.[72] Andy Haldane, Chief Economist at the Bank of England has described how our current corporate practices mean firms are "almost eating themselves"[73] and there are several movements and programmes actively engaging with the perceived challenges to the system, involving senior figures from some of the largest global corporations. The likes of Barclays and Kingfisher are involved in the Big Innovation Centre, running the Purposeful Company project, Mars are partnering Said Business School promoting the Responsible Business Forum, and Legal & General, McKinsey and Johnson & Johnson were all part of the advisory panel for the Review. Nor can it be argued that there is no appetite for investment in mission-led businesses since the IPO in February 2017 of Laureate Education, the first Benefit Corporation to list on a stock exchange, which raised $490million.

There are similarities, both in terms of approach and effect, in current assumptions around directors' responsibilities and investors' fiduciary duties. Just as we see greater clarity being desirable in terms of directors' responsibilities to stakeholders more widely, so we would propose a parallel move to make explicit (as mooted by the Kay Review in 2012) an extension of the concept of fiduciary duty

[72] Blackrock, 'Annual Letter to CEOs', available at: https://www.blackrock.com/corporate/en-us/investor-relations/larry-fink-ceo-letter
[73] Interview with Andy Haldane, available at: https://www.youtube.com/watch?v=ZmUlTuyRPd8

beyond narrow financial optimisation.[74] Again, this is consistent with positions being taken by respected actors in the sector, in this case the Principles for Responsible Investment (PRI) initiative and collaborators who, in their report *Fiduciary Duty in the 21st Century*, state that 'failing to consider long-term investment value drivers, which include environmental, social and governance issues, in investment practice is a failure of fiduciary duty.'[75]

Specifically, the Markets in Financial Instruments Directive (MiFID)[76] requires investment advisers and managers to ensure that, when providing investment advice or discretionary portfolio management, investments are 'suitable' for clients. This is a fundamental regulatory requirement[77]. At the moment, suitability is often understood and interpreted by advisers and managers in purely financial terms, whereas to comply with MiFID they should obtain information regarding a client's investment objectives also. As such, they should be routinely asking:

- whether the relevant client wishes to screen out investments which might have a negative social and/or environmental impact;
- whether the client wants investments with a positive social and environmental impact; and
- the relative importance of social and environmental impact as against other traditional financial factors, including return, risk and liquidity.

The best investment advisers and managers already do this, just as there are companies that genuinely act responsibly and take stakeholder interests into account. However, custom and practice again leads the herd to follow the well-worn, limiting path. Addressing the misconceptions around 'suitability' at the same time as clarifying directors' duties under section 172 is an example of complementary interventions with the potential to shift perceptions and practice.

Research and academia

The advisory panel identified a role for 'educators' – including academia and the wider research community – in building support for mission-led businesses. They call especially on academics to contribute towards building more evidence that can help 'challenge the idea that caring for society must come at the expense of profit.'[78] While this is clearly one of the roles for researchers in this field, we regard their potential impact in this space as wider still. Alongside empirical work into the practical development of new business forms, including mission-led firms, academics and researchers, often collaborating with those in practice, have a key role to play, too, in generating in-depth conceptual work on enterprise diversity and corporate reform, involving some necessary 'blue-sky' thinking.[79] How to teach business and entrepreneurship, management and law, and how to generate awareness of our respective fields of studies, is (and should be) subject to constant review and critical, sometimes

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[74] The *Kay Review*, above note 3, cf. Chapter 9

[75] *Fiduciary Duty in the 21st Century: Global Statement on Investor Obligations*, p. 9, available at: http://www.unepfi.org/fileadmin/documents/fiduciary_duty_21st_century.pdf

[76] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0065&from=EN

[77] Financial Conduct Authority, *Conduct of Business Sourcebook*, chapter 9, available at: https://www.handbook.fca.org.uk/handbook/COBS.pdf

[78] *On a Mission in the UK Economy*, above note 4, p. 17

[79] N. Boeger and C. Villiers (eds.), *Changing the Corporate Landscape: towards corporate reform and enterprise diversity* (Hart, 2018, in press)

radical, debates.[80] This is a field also that lends itself to interdisciplinary collaboration especially in the field of management and organisation, business studies, economics and finance and law.[81]

More importantly still, as indicated previously, issues of corporate governance and the underlying problems of capitalism are so closely connected that study of one usually necessitates at least engagement with the other. The relevant academic fields here go well beyond the relatively narrow schools of business, management and corporate law and governance. Recent critical academic works with high-impact - on the development of capitalism in the 21st century,[82] on the entrepreneurial role of the state,[83] and on the cost of social and economic inequality[84] - all illustrate that these issues are connected as part of a broader picture. Far from acting as technical executors whose primary role is to grow an evidence base in support of a business case for business with purpose, academic and wider conceptual ('ideational') research is necessary to generate the foundations for new modes of thinking about business *and* capitalism, in collaboration always with those in the policy and practical space.

Professional advisors

The cost of professional advice means that often clients seek out advisors who have a track record in a specialism and can advise on the current state of affairs. From the advisors' perspective, their advice tends to reflect custom and practice (as well as what is compliant). This is not an environment which encourages creativity and innovation and if a company wishes to do something different, it can find the consensus among advisors discouraging. There are exceptions of course, but one of the benefits of legislative changes is that they push advisors to adapt to the new requirements. This is acknowledged in the Review, with its recommendation that 'advisory firms commit to better-serving mission-led businesses through increased training and extending their pro bono remit.'[85] A further step which would be likely to improve the quality of advice from such firms would be a commitment on their part to become mission-led themselves, so they advise from a position of empathy and experience and not purely as technicians.

Executives and corporations

Bill Torbert, author of *Action Inquiry: The Secret of Timely and Transforming Leadership*[86], has identified a critical ingredient of good leadership as making oneself open to opportunity, so that when the moment arises, you are ready to step into it. It is not unreasonable to see this applying very well to those running businesses who may, to date, have claimed that investor expectations and/or management behaviours inhibit their ability to embrace a more mission-led approach, even though they personally see merit in it. As alignment occurs between policy and regulation, and market expectations, and public discourse (whether at large or within intermediary sectors such as advisors and academia), those running businesses need to be ready and willing to lead. The experience of those already behaving in this manner suggests key to this will be mission alignment – aligning the impact of the business with the interests of society – in a way that is clearly visible to and understood by their

[80] C. Steyaert, T. Beyes and M. Parker, M (eds.), *The Companion to Reinventing Management Education* (Routledge, 2016)
[81] T. Hadden, P. Ireland, G. Morgan, M. Parker, G. Pearson, S. Piccoto, P. Sikka and H. Willmott, H (writing as The Corporate Reform Collective), *Fighting Corporate Abuse: Beyond Predatory Capitalism* (Pluto, 2014)
[82] T. Piketty, *Capital in the Twenty First Century* (Belknap, 2014)
[83] M. Mazzucato, *The Entrepreneurial State: Debunking Public vs Private Sector Myths* (Anthem, 2013)
[84] K. Pickett and R. Wilkinson, *The Spirit Level: Why Equality is Better for Everyone* (Penguin, 2010)
[85] *On a Mission in the UK Economy*, above note 4, p. 23
[86] B. Torbert, *Action Inquiry: The Secret of Timely and Transforming Leadership* (Berrett-Koehler, 2004)

stakeholders. In turn, this will require diligent measuring of what matters, employing as much rigour as is devoted to financial management, as a means of building credibility and trust. The work of the social impact sub-group of GECES (the European Commission Expert Group on the social business initiative) provides an example of some of the more progressive thinking already taking place in this space.[87]

The wider role of the state

As the advisory panel recognised in its recommendations, there is a role for government in creating room for debate (as well as introducing legislation). It might take a variety of forms and, in this case, it would be desirable for them to be framed very much in terms of being deliberately 'blue sky' and 'thinking the unthinkable', to encourage the sense that the debate itself is about embracing systemic, not cosmetic, change. While on one level, it may generally 'raise awareness and lead conversations about the positive role that business plays',[88] it should also initiate more concrete changes, for example by 'enabling blended finance investment models and social pension pots.'[89]

This might mean, for example, that in terms of policy and regulation, there could be debates around matters such as:

- Linking corporate behaviours to the licence to operate, so that extreme or persistent criminal performance means a business and the individuals behind it are barred from continuing to operate in the jurisdiction.
- Imposing surcharges to reflect the cost of externalities on pure for-profit businesses, with relief from such surcharges being applied to mission-led businesses.
- Linking pension fund performance to company performance so that dividends cannot be declared where deficits above certain levels exist in related pension pots.

Though they are, of course, linked, part of the debate instigated by government would be as much focused on culture change as policy. This might build from questions such as:

- What are the public purposes of corporations, such that they merit the gift of limited liability?
- How might law and policy be structured so that super pay and super profits come to be seen as evidence of misalignment within an organisation's governance, and so an indication of potential failure, rather than a measure of success?
- Should formal linkages be required between a company's performance and the UN Sustainable Development Goals?
- What expectations are there on mission-led businesses with regard to approaches to taxation?

Government may also look at how it behaves itself to encourage mission-led business, or be consistent with the behaviours it is advocating, for example through:

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[87] GECES Sub-group on Impact Measurement, 'Proposed Approaches to Social Impact Measurement in the European Commission legislation and practice relating to EuSEFs and the EaSI', available at: http://ec.europa.eu/DocsRoom/documents/12966/attachments/5/translations

[88] *On a Mission in the UK Economy*, above note 4, p. 15

[89] *Ibid.*, p. 18

- Taking the benefits deriving from a mission-led approach into account in public procurement evaluation.
- Directing other spending decisions (such as subsidies) towards mission-led businesses where appropriate.
- Applying the measures required of mission-led businesses to government practices (so, for example, if a B Corp model was adopted, applying the Impact Assessment to arms of the State and reporting on their performance publicly).

9. Conclusion

Despite its relatively low political and public profile, the Review highlights an issue attracting interest within government and beyond and one with potentially profound impact over time. There is rampant uncertainty around the economic, political and natural environments within which we and successive generations will live and work, but however they turn out, clinging to 'business as usual' does not feel a recipe for success. Instead, in the aftermath of Brexit, might the UK reposition itself as a global leader in an emergent approach to mission-led business which it invites other nations to explore collaboratively with it? On an individual level, when automation, migration and the hollowing out of many industries and the communities that have grown up around them demand reassessment of our relationships with work and identity, might we engage with businesses – and they with us – in ways that fundamentally (re-)shape our society and culture in the twenty-first century, rather than risking the stratified societies common to the dystopias found in Orwell's *1984*, Atwood's *Oryx and Crake* trilogy and Huxley's *Brave New World*?

One of the impacts of explicitly identifying the mission of any given business is that it stipulates how it will benefit people, whether as customers, employees or members of the wider community and, in doing so, re-humanises the organisation. It enables the space that a business operates within to be (to an increased degree) relational, rather than merely transactional. It is curious that humanising business may seem a radical proposal and that implementing it may seem such a challenge. But many now point to the danger of not following this path and of continuing to pursue 'the separation of capitalism from humanism.' At the end of this path, as Yuval Noah Harari points out, 'you could have very sophisticated and advanced economies without any need to liberalise your political system or to give freedom to invest in the education and welfare of the masses'.[90]

Different constituencies, as our discussion has highlighted, come to the debate on mission-led business with different and sometimes complex motivations. We have seen that commercial incentives and the business case for corporate purpose – 'doing good to do well' – is a strong if not the dominant narrative in the Review itself. Others, including the current government, appear to come to the debate on mission-led business with a political motivation to ameliorate capitalism and temper the self-destructive effects of its economic logic by imposing on businesses a greater social responsibility. Yet others, including many entrepreneurs (both social and otherwise) come with a wider motivation to re-think the possibilities of business. For many of them, the fulfilment of its purpose is primarily why a company exists. Making profits is an important element of what the company does to ensure its longevity and ability to continue delivering on its mission, but this is not

[90] *The Guardian*, 'Yuval Noah Harari: 'Homo sapiens as we know them will disappear in a century or so'', 19 March 2017, available at: https://www.theguardian.com/culture/2017/mar/19/yuval-harari-sapiens-readers-questions-lucy-prebble-arianna-huffington-future-of-humanity

its *raison d'être*. The distinction has been voiced, more than once, using the analogy that, just 'as humans need to breathe, but breathing is not their purpose, so businesses need money, but making money is not their purpose'.[91] This goes to the heart of the change in corporate outlook that is required and invites us to consider meaning, as individuals, organisations and society in a way which has been absent from the national debate for decades. This would seem to be where many social enterprises but also those in, and interested in, the B Corp movement are often coming from.

Our discussion further highlights that these motivations matter. They shape how the mission-led business agenda will be taken forward and what difference it can make to our future as a society. Responses to government Green Papers are not typically matters for the general public. However, it is possible for every one of us to act in ways which demonstrate that how companies conduct themselves is something that matters to us, whether as customers or employees, in some cases as investors, or as members of communities. This can influence politicians and corporate decision makers and pension fund managers, so none of us should assume we cannot affect how this unfolds. The greater the extent of engagement at all levels with the concept of businesses being mission-led, the more likely we are to find any shift going beyond being the latest CSR initiative. This may well ameliorate capitalism, although it may not prove sufficient to stave off the existential challenges capitalism faces given the planet's limited resources. It should benefit those businesses which embrace it and, more importantly, contribute to wider positive cultural shifts in the relationships between businesses and the people they engage with and effect.

If these principles are accepted, the question moves onto how this should be implemented. We have touched on questions of legal form in our discussion, and hope to see the detail around this and other interventions becoming the focus of attention in coming months. Our proposals suggest that there is room for a new legal form for mission-led businesses in the UK that could, but need not, follow the model of the Benefit Corporation, nor its nomenclature. This new model would set mission-led businesses apart from ordinary corporations because it would impose on directors the role of a fiduciary and formulate their duties accordingly. It would commit the company to a statement of purpose that is clear and specific and would be supported by formal reporting that included a regular assessment of the firm's wider social impact. If the prediction of the panel of all businesses having a mission that includes serving society and the environment by 2026 is to be realised, we would expect incentives to be necessary to ease the transition for many existing companies to adopt the mission-led approach, along with adoption of several of the ancillary initiatives referred to. The prize though, again as anticipated by the panel, is an economy and a society thriving in ways that will not be achievable without such a shift.

[91] Cited by Lord Stern, speaking at the British Academy on 13 July 2017 and attributing this to John Kay. John Kay in turn attributed it to Charles Handy, in person on 7 November 2017. The authors have not had the opportunity to ask Mr Handy to confirm he is the source.