



Press release

Company directors should consider company's nature-related risks, landmark English law legal opinion finds

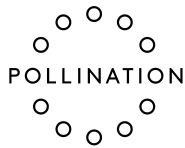
- A landmark independent legal opinion has found that directors need to consider their company's nature-related risks (which encompass, but are broader than, climate risks) as part of their duties under English company law.
- Commissioned by Pollination Law and the Commonwealth Climate and Law Initiative (CCLI), the opinion was authored by a team of corporate and financial law barristers (high-ranking silks [Sharif Shivji KC](#) and [Rebecca Stubbs KC](#) leading [Karl Anderson](#) and [Hossein Sharafi](#), with contributions from environmental law expert, [James Burton](#)).
- Board directors could potentially breach their duties by failing to consider or act on relevant nature-related risks, which could lead to personal liability. This highlights the need for nature to rise up the corporate agenda.

LONDON, 13th March 2024: Company directors should consider their company's nature-related risks as part of their legal duties under the law of England and Wales, a landmark legal opinion has found. It warns that failure to identify and assess latent financial risks arising from a company's unaddressed nature-related impacts and dependencies could expose directors to increased shareholder scrutiny and legal consequences under the Companies Act 2006. Directors can document active consideration of these risks to protect from litigation like the recent ClientEarth v Shell case (see further below).

Nature-related risks (which encompass, but are broader than, climate risks) fall within existing financial risk categories and are not new. The [Taskforce on Nature-related Financial Disclosures](#) (TNFD) defines these as "*potential threats (effects of uncertainty) posed to an organisation that arise from its and wider society's dependencies and impacts on nature*". This includes physical risks, such as a decline or collapse of ecosystems that underpin a company's operating model, and transition risks, including shifting consumer preferences and legal requirements.

Nature-related risks are increasing in political and commercial prominence as the scientific understanding of the state of nature decline globally has grown. For example, [research shows](#) that wildlife populations have declined by almost 70% since 1970, with worldwide extinction rates up to hundreds of times higher than over the past 10 million years. Additionally, [preliminary analysis](#) indicates that 52% of UK GDP and 72% of UK lending are dependent on ecosystem services. Similarly, 74% of sectors covered by the UK FTSE All-Share Index are [estimated](#) to be highly dependent on natural capital, which is rapidly declining.

The opinion, commissioned by Pollination Law and CCLI, clarifies the legal basis for the financial relevance of nature in decision-making by boards subject to the law of England and Wales at a time when critical action is needed to protect and restore nature and the ecosystem services on which companies depend. The opinion specifically examines directors' duties to promote the success of the company and act with reasonable care, skill and diligence under sections 172 and 174 of the Companies Act 2006.



Defining existing obligations for directors

Authored by a team of five barristers led by Sharif Shivji KC and Rebecca Stubbs KC, this is the latest in a series of expert legal opinions across jurisdictions clarifying the status of nature in a corporate governance context, including in [New Zealand](#) and [Australia](#). A 2022 [report](#) by the CCLI suggested that similar findings could be applicable under many other company law frameworks around the world, including Canada, India and South Africa.

The opinion recommends that directors identify and consider the extent to which the company faces nature-related risks, ensuring these are appropriately assessed and evaluated. They should also take steps to manage and mitigate these risks (where appropriate), which may include designing and implementing a framework for systematic risk management.

The opinion also emphasises that directors should consider the extent to which their company's nature-related risks should be disclosed. At a minimum this should be in line with regulatory requirements, but in some circumstances directors may decide that compliance with their duties may be better achieved by giving voluntary disclosure where there is an emerging market standard or investor expectation to do so. Under some financial regulations certain companies already have legal duties to report on material nature-related risks and their impacts on nature.

The opinion establishes that a director can face significant consequences for breaches of these duties, including potential claims for damages or compensation. Even in cases where it is difficult to quantify the loss the company has suffered, a director can face adverse consequences for the breach, such as termination of employment or a challenge to any remuneration or exit package.

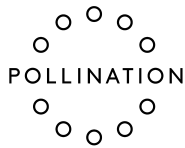
The opinion notes the recent [extra-judicial commentary](#) from retired Supreme Court judge Lord Carnwath on the courts' refusal to permit ClientEarth's claim against the directors of Shell regarding their management of climate risks. It cites this as a reminder that another judge could have decided the case differently and suggests that the decision is not necessarily a bar to similar claims regarding nature-related risks. The opinion concludes that a director who has identified and considered the company's nature-related risks is much better protected from such claims.

The opinion also notes that a director who 'greenwashes' the company is likely to expose the company to: (i) latent financial risks arising from unaddressed nature-related impacts and dependencies, (ii) the risk of shareholder and investor claims (including for deceit) and (iii) reputational risk.

Tangible example of nature-related risks for UK companies

The Shivji KC & Stubbs KC Opinion identifies a number of practical examples where nature-related risks can have material financial consequences for companies and their supply chains.

This includes physical risks, such as a decline or collapse of ecosystems that underpin a company's operating model. One such example is that companies in the UK food production sector are highly dependent on soil health, which is essential for producing crops and livestock but is being degraded by unsustainable practices. The UK Government Department for Environment, Food & Rural Affairs [estimates that](#) "soil degradation, erosion, and



compaction result in losses of about £1.2 billion each year and reduce the capacity of UK soils to produce food.” Further, the UK’s House of Commons Environment, Food and Rural Affairs Committee has [recently pointed to](#) the Environment Agency’s findings that “soil degradation is putting 4 million hectares of soil at risk of compaction as well as over 2 million hectares of soil at risk of erosion (which could take hundreds, or thousands of years to form again)”. This dependency on soil health could therefore result in reduced access to, or higher costs for, key commodities required as inputs for food producers, manufacturers, retailers and financiers in the supply chain.

Other examples of physical risk include those to banks that hold mortgages over homes at risk of coastal flooding and horticultural and agricultural producers dependent on pollinators which are in decline.

Companies can also face transition risks, including shifting consumer preferences and new legal requirements seeking to reduce nature loss. The Opinion highlights restrictions under Schedule 17 of the Environment Act 2021, which will prohibit businesses operating in the UK that use key forest-risk commodities produced on illegally occupied or used land. Another example is the EU Deforestation Regulation, which places due diligence requirements on UK companies selling specified products into the EU to ensure that they are deforestation-free.

The type of nature-related risks faced by a company will depend on the company’s specific business activities, operating locations, and supply chains. Additionally, nature-related risks can be systemic and affect the whole [financial system](#) by way of supply chain disruption, price volatility, collateral and asset depreciation, increases in defaults, and greater insured losses.

Rebecca Stubbs KC, Maitland Chambers, said: *“Our analysis demonstrates that nature related risks are no different to any other risks faced by company directors. Directors are required to give consideration to all relevant risks facing their businesses”.*

Martijn Wilder, CEO of Pollination, said: *“This landmark opinion reiterates the need for boards to put relevant nature-related risks on their agendas and be able to demonstrate that they have given those risks proper weight and consideration in decision-making.”*

Thea Philip, Associate Director at Pollination said: *“The natural systems upon which our societies depend are collapsing. The current state of nature means that countries like the UK no longer have intact natural systems to support the growing demand for clean water, climate regulation, air purification, and food production. This landmark legal opinion provides clarity, for the first time, on directors’ obligations with respect to nature-related risks in the UK. It’s time for directors to take action.”*

James Cameron, Senior Advisor at Pollination and experienced board member said: *“This authoritative interpretation of the law as it is connects nature, finance and governance through the medium of risk. It follows therefore that Directors should take the necessary steps to assess and mitigate nature-related risks facing the company to discharge their legal duties.”*

Professor Thom Wetzler, Associate Professor of Law and Finance at the University of Oxford, Founding Director of the Oxford Sustainable Law Programme and Trustee of the CCLI, said: *“We increasingly understand the potential severity of nature-related risks for companies. Yet, directors commonly fail to appreciate the severity of these risks and thereby*



needlessly put their company at risk. This important report highlights what should have been obvious long ago: nature-related risks are not distinct from other financial risks, and should therefore be considered by directors in furtherance of their legal duties."

Cynthia Williams, Executive Director of the CCLI and Roscoe C. O’Byrne Chair in Law, Indiana University said: *“This legal opinion from eminent barristers gives directors in the UK clarity about their duties to understand and mitigate their company’s exposure to nature-related risk. It marks a turning point in understanding the corporate governance implications that arise from nature-related physical, transition and systemic risks, as part of existing financial risk categories.”*

Jenni Ramos, Corporate/Finance and Biodiversity Lawyer, CCLI said: *“This opinion is not a radical interpretation of UK company law, but a logical, authoritative and diligent elucidation of established legal principles, supported by comprehensive evidence. It confirms that nature-related risks are relevant to a company’s financial success and therefore to directors’ legal duties. This signals an opportunity for directors to steer their company on a competitive path through the nature-positive transition.”*

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About Pollination:

Pollination is a global investment and advisory firm focused on climate and nature. It designs, builds and invests in climate and nature solutions to accelerate the transition to a net-zero, nature-positive future. Established in 2019, Pollination has brought together a global team of over 200 leading experts from across the climate and nature ecosystem; spanning finance, investment, technology, business, law, policy and science. Leveraging unique market insights, it supports clients to navigate the transition, and designs investment platforms and funds to meet investor needs and deliver real impact. For more information, see www.pollinationgroup.com.

About the CCLI

The Commonwealth Climate Law Institute is a global non profit legal research and stakeholder engagement initiative. We produce legal research and practical tools on how to integrate the risks and opportunities of climate change and biodiversity loss into corporate and investment governance, in order to minimise the risk of personal liability for directors, officers and investor fiduciaries, and maximise near term efforts in the transition to a sustainable economy. We work to advance knowledge on effective sustainable governance practice. For more information, see www.commonwealthclimatelaw.org/.

