



Woodsford

ESG and Stakeholder Engagement

Woodsford: ESG and Stakeholder Engagement

What happens when catastrophic breakdowns in ESG cause loss to a company's customers or its shareholders? How are ESG wrongdoers held to account?

ESG is an acronym for the wide range of Environmental, Social, and Governance standards that companies now increasingly say that they comply with, or which they are otherwise legally required to comply with. Companies make ESG promises, and otherwise have ESG obligations to a variety of stakeholders, including their investors, their customers, their regulators and the wider community in which they operate.

Banks promise their regulators (and their investors) that they don't engage in money laundering or terrorist financing. Fashion brands promise their customers (and, again, their investors) that their supply chains use sustainable materials and a properly paid workforce. Technology brands promise all of us that the prices we pay for their ubiquitous products are fair and competitive.

When a company fails to comply with its ESG obligations and causes loss or damage to one or more categories of its stakeholders, those wronged stakeholders - the shareholders who invested based on promises that turned out to be untrue - the customers who have been ripped off - could potentially engage with the company on an escalated and collective basis, up to and including litigation. They will often have a good legal case, and they will almost always have at least two key motivations to litigate. First, to seek compensation. Second, to hold the wrongdoers to account.

But there is often a wide gulf for many stakeholders between having good reasons and motivations to collectively engage on the one hand, and having the practical ability to do so, on the other.

At [Woodsford](#), our [ESG business](#) is about helping stakeholders bridge that gulf. There are two key ways in which we do that.

First, informing and organising stakeholders.

ESG claimants will almost always be in large, often disparate, groups that lack any pre-existing organisation. They may not be aware that they have been wronged, for example they might be customers who don't know that they have been unfairly overcharged for goods or services. And even if they are aware that they have been wronged, for example investors whose investments have lost value due to ESG breakdowns, they won't necessarily know how to get in contact with others in a similar position or may not have the resources to do so. Woodsford solves these problems, in liaison with expert law firms and other professionals. We are pioneers in using law, technology and finance to collect together large groups of stakeholders, either in opt-out classes (for example in the UK Competition Appeal Tribunal or using *Dutch Stichtings*) or by bringing claimants together on an opt-in basis (possibly using SPV vehicles).

Second, taking all of the economic risk in the engagement, with our remuneration entirely contingent upon success.

We provide significant funding for the legal and other costs of engagement, up to and including litigation, and we provide claimants with indemnities against any adverse costs consequences.

Some examples:

Australian Royal Commission Cases

Australia's Royal Commission into the banking and financial services industry, which handed down its findings in 2019, found that many of the country's leading financial institutions had

ripped off customers, broken the rules and lied to regulators. The investigation revealed unscrupulous behaviour and multiple compliance breaches related to, among other things, money laundering.

Woodsford is supporting many claims by customers of Australian financial services companies, including:

- individuals who acquired financial products on the advice of advisors licensed by Count Financial, a subsidiary of [Commonwealth Bank of Australia \(CBA\)](#). It is alleged that Count Financial advisors were remunerated in a way that gave rise to conflicts of interest, and they failed to always act in their customer's best interests when giving financial advice.

- customers who obtained life or income protection insurance issued by [CommInsure](#), a subsidiary of CBA, on the recommendation of a financial advisor licensed by other subsidiaries of CBA. It is alleged that CBA's financial advisors were incentivised through commissions and other benefits to recommend insurance through CBA's related party CommInsure, resulting in their customers paying unfairly higher insurance premiums.

- similar claims relating to the advice of advisers from [AMP Limited](#) financial advice licensees, including [AMP Financial Planning](#).

- hundreds of thousands of Australians who were allegedly charged excessive insurance premiums because Commonwealth Bank's superannuation provider - [Colonial First State Investments Limited](#) - tipped its members into overpriced policies with the bank's insurance arm CommInsure.

Fatal Health and Safety Breaches

A tragic, and potentially avoidable, accident claimed four lives at the [Dreamworld Theme Park](#) on 25 October 2016. Dreamworld, owned by Ardent Leisure Group, is a major tourist

attraction on the Gold Coast in Queensland, Australia. There is evidence, including findings from a Coronial Inquest into the incident, that Ardent misled its investors and others about the safety measures and corporate governance standards in place at Dreamworld in the years preceding the accident. Woodsford is supporting claims that ESG breakdowns at Ardent gave rise to significant shareholder losses.

Bribery and Corruption on a Global Scale

Airbus SE is a European headquartered, multinational aerospace corporation. Airbus designs, manufactures and sells civil and military aerospace products worldwide. In one of the most egregious breakdowns of ESG in recent years, it came to light in the course of investigations by the French Parquet National Financier, the [U.K. Serious Fraud Office](#), and the [US Department of Justice](#) that Airbus had engaged in bribery and corruption on a global scale. In January 2020, Airbus agreed to pay penalties of approximately US\$4 billion plus interest and costs to resolve foreign bribery charges with US, French and UK authorities. Airbus investors who suffered significant losses as a result of these breakdowns in ESG fall into two main categories - those who trade in Airbus securities within the US, and those who trade in Airbus securities in Europe, particularly in France. In May 2022, Airbus agreed a multimillion-dollar settlement in the US with investors who fall into the former category. The vast majority of affected investors fall into the latter category. Airbus has not yet settled with, and has therefore not yet been held accountable to, those investors.

Woodsford has organised investors and is pursuing compensation and accountability in Europe in two separate ways.

First, Woodsford has organised a group of major international, institutional investors, who are seeking to engage with Airbus on an opt-in basis.

Second, Woodsford has supported and funded the constitution of a Dutch foundation (a *Stichting*) that represents other investors, including retail (mom ‘n’ pop) investors, on an opt-out basis.

Credit Cards

In order to entice new customers, credit card providers often offer interest-free periods. Australia and New Zealand Banking Group (ANZ) did just that. However, between 2010 and 2018 ANZ charged interest to customers retrospectively on credit card purchases that previously had the benefit of an interest-free period. It is alleged that ANZ’s “interest-free” credit card contracts contained unfair terms and that ANZ engaged in unconscionable conduct causing loss and damage to ANZ credit card holders. Woodsford is supporting the law firm [Phi Finney McDonald](#) in Australian litigation through which affected customers seek compensation and accountability.

Anticompetitive Conduct and ESG

Woodsford is a pioneer of the relatively new opt-out regime for collective actions and consumer redress in the UK Competition Appeal Tribunal, which is the only opt-out litigation regime in the UK. Examples of our work include:

Trains: An affordable public transport network is vitally important to the economy and to the environment, particularly in major cities like London. Woodsford is therefore proud of our significant financial and other support for class actions against [train operating companies](#) who operate lines in and out of London and who it is alleged to have been overcharging customers.

Shipping: Anticompetitive conduct by big corporates distorts markets and ultimately causes harm to consumers. In particular, cartel behaviour often leads to consumers being overcharged. From October 2006 to September 2012, a number of shipping companies engaged in unlawful cartel

behaviour. They exchanged commercially sensitive information, coordinated prices and divided customers amongst themselves, to avoid competing with each other. The cartel is likely to have made the cost of shipping new cars and vans into the UK and Europe higher than it should have been. Woodsford is providing significant financial and other support for a [class action](#) through which consumers and business affected by the cartel seek compensation and accountability.

Misleading Fuel Efficiency Labels

The climate emergency has led to an increased focus by consumers on vehicle fuel efficiency. It is therefore vital that we can trust statements made about fuel efficiency by manufacturers and distributors of cars and other vehicles.

In 2019, an Australian court found that Mitsubishi Australia had engaged in misleading and deceptive conduct in relation to the sale of the Mitsubishi Triton vehicle. In particular, Mitsubishi made misleading statements about the vehicle’s fuel efficiency. That decision was upheld by the Supreme Court of Victoria in Melbourne. Following that court decision, [Woodsford](#) has agreed to support litigation brought on behalf of Mitsubishi Triton GLS owners who acquired certain utility vehicles between 2015 and 2021. It is alleged that the consumption labels affixed to affected vehicles and brochures published by Mitsubishi made several false and misleading representations about fuel efficiency, and that the fuel consumption results on the labels and in the brochures were significantly lower than the fuel consumption results the Affected Vehicles would have achieved, if tested properly under the relevant Australian Design Rule.

Superannuation Fund Governance

In Australia, trustees of superannuation funds hold fund assets on behalf of the fund’s members. The trustees owe duties to those members. Woodsford is funding a claim against one such trustee, QSuper, for breaching those

duties. In July 2016, QSuper changed the group life insurance policy available to its members. It is alleged in the class action that QSuper failed to provide members with information reasonably necessary for them to take steps to benefit from that change to their insurance policies. Failing to notify members of the potential entitlement to reduced premiums resulted in members paying higher insurance premiums to QInsure (a related party of QSuper) than they otherwise would have paid.

Defrauding the UK Government

G4S and Serco are two, separate, companies that do significant business with the UK government, in particular in the privatised part of the UK criminal justice and prison sectors. In 2013, the UK government announced an immediate review into contracts held by G4S and Serco. The Justice Secretary Chris Grayling made a statement to the House of Commons explaining that in May 2013, the MOJ had identified a “*significant anomaly in the billing practices under the current contracts. It appeared that we were being charged in ways not justified by the contracts and for the people who were not in fact being monitored*”.

G4S

In 2014, news emerged that G4S had agreed to pay the UK government a settlement of over £100 million for overcharging on contracts relating to prisoner services.

In the summer of 2020, a G4S subsidiary signed a Deferred Prosecution Agreement (DPA) with the UK Serious Fraud Office, in which it admitted multiple counts, accepting that the company has submitted false and fraudulent statements to the UK government.

The ESG team at Woodsford identified these problems at G4S and brought to the attention of institutional investors of each company that they had a right to commence proceedings pursuant

to the UK Financial Services and Markets Act, with a view to seeking compensation for the loss in shareholder value and holding the wrongdoers to account for their ESG failings. Those proceedings are ongoing.

G4S tried to have the proceedings against them struck out on a technical point. They argued that, if the wrongdoing was not known about by the small number of directors on the board of G4S plc, then shareholders should not be entitled to a finding in their favour. The Court [rejected G4S's argument](#), and the litigation will now proceed to trial, if G4S does not agree to an amicable settlement.

Serco

In 2019, Serco announced that a UK Serious Fraud Office investigation into Serco's contracts with the UK government had led to a DPA between the SFO and a Serco subsidiary. In short, the price to be paid by the UK government for certain services was to be based on Serco profit margins. A financial model was to be provided to the government every six months, taking into account actual revenues and costs incurred. In order to force the UK government to pay more than it should have done, Serco provided false and fraudulent models. The fraudulent scheme involved charges of £500,000 per month for costs which were “complete fabrications”. The relevant Serco subsidiary admitted fraud and false accounting and agreed to pay a fine of £19.2m together with £3.7m, in respect of the SFO’s investigation costs.

Later in 2019, the SFO announced that it was charging the former Finance Director of Serco Home Affairs, and a former director of another Serco subsidiary, with fraud and false accounting. The case against those individuals ultimately collapsed because of a failure of the SFO to disclose evidence that potentially supported the defence of those individuals that their superiors at Serco knew about the alleged wrongdoing.

Also in 2019, the Financial Reporting Council announced that it had imposed sanctions against Deloitte LLP and its audit engagement partner following their admissions of misconduct in relation to Serco. The Settlement Agreement recorded that the misconduct involved failing to react to clear indicators of the risk of potential fraud on a UK government department, despite such indicators being visibly set out on the relevant Serco audit file for 2011 and 2012.

The ESG team at Woodsford identified these problems at Serco and brought to the attention of institutional investors of each company that they had a right to commence proceedings pursuant to the UK Financial Services and Markets Act, with a view to seeking compensation for the loss in shareholder value and holding the wrongdoers to account for their ESG failings. Those proceedings against Serco are ongoing.

Money Laundering and Terrorist Financing

Particularly following the international response to the Russian invasion of Ukraine, compliance with international sanctions and with anti-money laundering (AML) and counter-terrorist financing (CTF) rules are big issues for banks. A number of major international banks have, over the past 10 years, failed to live up to their ESG promises in relation to sanctions, AML and CTF. Woodsford has identified several such breakdowns in ESG at major banks that have led to significant loss in shareholder value, and we have helped investors to organise and to seek compensation and accountability.

Standard Chartered

In 2012, Standard Chartered Bank paid a total of US\$667 million in fines and forfeitures to settle allegations by US authorities of sanctions breaches involving billions of US dollar transactions with Iranian or Iran-linked entities. In August 2014, US authorities issued a further order requiring Standard Chartered Bank to pay US\$300 million for breach of its 2012 deferred

prosecution agreement, in relation to deficiencies in the bank's anti-money laundering transaction surveillance system in its New York branch. On 9 April 2019, Standard Chartered Bank admitted that until at least 2014, notwithstanding the fines in 2012 and 2012, the bank had continued to facilitate US dollar transactions involving Iranian or Iran-linked entities. The bank agreed to pay an additional US\$1.1 billion in penalties. In addition to the loss in shareholder value caused by these repeated breaches, in July 2019, the price of Standard Chartered PLC's shares listed in London suffered another fall following reports of a whistle-blower claim that between 2009 and 2014 the bank had cleared far more transactions in violation of Iran sanctions than had been included as the basis for the fines levied in April 2019. Standard Chartered's share price suffered a drop of 5.82% on 21 September 2020, following media reports covering the disclosure of the US FinCEN files and naming Standard Chartered Bank as one of five global banks who continued to facilitate transactions for certain clients even after raising suspicious activity reports about them with the US authorities.

The ESG team at Woodsford brought the above problems and related loss in shareholder value to the attention of institutional investors and organised a number of international investors into a group, for the purposes of escalated and collaborative engagement with Standard Chartered. Having not agreed to pay compensation and thereby be held accountable, litigation has been commenced against Standard Chartered in the High Court in London.

Westpac

In 2019, the Australian Transaction Reports and Analysis Centre (AUSTRAC) alleged that Westpac had engaged in 23 million breaches of Anti-Money Laundering and Counter-Terrorism Financing legislation in transactions totalling A\$11 billion. AUSTRAC also alleged that certain transactions related to child abuse and exploitation in the Philippines and Southeast Asia and that Westpac was aware of its systemic

deficiencies in relation to its anti-money laundering protections for a substantial period. Westpac's CEO and Chairman both stepped down, and in the four days following the announcement by AUSTRAC, Westpac's share price fell by 7.95%, wiping a huge A\$7.4 billion off its market capitalisation. AUSTRAC went on to fine Westpac A\$1.3 billion in September 2020, the largest fine ever issued in Australia for corporate misconduct.

Woodsford is behind what is possibly the [largest ever Australian class action](#), and one of the highest value litigations globally, seeking compensation and accountability on behalf of investors who have suffered loss because of the breakdowns in ESG at Westpac. Westpac has settled the US equivalent of this litigation brought on behalf of US investors but has not yet agreed a settlement, and thereby accountability, to non-US, in particular Australian, investors.

ESG and the nuclear power industry

Good governance is absolutely vital in the nuclear power industry. Problems at nuclear power facilities have potentially global consequences.

In September 2019, the President of the Kansai Electric Power Company (関西電力株式会社) in Japan admitted that he and 19 other executives of the company, including several senior executives, had received significant payments and gifts from Eiji Moriyama, the former Deputy Mayor of the town of Takahama, where KEPCO maintains a nuclear power plant. An external investigation released by the company in 2020 noted that following receipt of those payments and gifts, Kepco employees and executives had provided internal information to Mr Moriyama and several contracts had been awarded to companies with which he was connected.

Despite becoming aware of the issue in early 2018 and commencing an internal investigation

in July 2018, Kepco did not disclose anything to the market until 27 September 2019. When the scheme was publicly revealed in September 2019, it had a significant impact on shareholder value, wiping over JPY ¥150bn (approx. US\$1.35 billion) off the market capitalisation of Kepco over two days.

A 2021 publication by the Asian Corporate Governance Association expressed concern that there had been insufficient accountability for these serious breakdowns in ESG: *“Perhaps what is the most striking aspect of the whole affair, however, is how little seemed to come of it. There were apologies and resignations: KEPCO chairman Makoto Yagi resigned in 2019 and President Shigeki Iwane followed him out the door in 2020. Meanwhile, METI in March 2020 issued a business improvement order to KEPCO, seeking a clarification of responsibilities and better legal compliance. But the only people likely to see a day in court are a handful of former executives being sued by the company for their alleged part in the scandal.”*

Woodsford has taken steps to help investors address these issues. We have brought the ESG failings at Kepco to the attention of institutional investors, and we have organised a large number of international shareholders into a group, who are pursuing legal action in Japan, seeking compensation and accountability.

Do UK and other international companies treat the ESG concerns of their US investors with more respect than their non-US investors?

In a number of Woodsford's cases, UK, European and Australian companies have paid compensation, and thereby held themselves accountable, to their US investors, but have (thus far, at least) refused to treat their non-US investors no less equally. In addition to the Airbus and Westpac cases referred to above, Woodsford is backing the Barclays Dark Pool case in the London High Court.

In June 2014, the New York State Attorney General (NYAG) alleged that Barclays had engaged in fraud and deceptive practices in relation to its alternative trading system known as LX Liquidity Cross, also referred to as a 'Dark Pool'. Among other things, it was alleged that, while Barclays promised its customers that it would keep predatory, high-frequency traders out of the Dark Pool, Barclays in fact welcomed those predators into the Dark Pool, unbeknownst to most of its LX unwitting customers. Barclays did not immediately admit the allegations, but later, in early 2016 Barclays Plc settled the NYAG Complaint on the basis that Barclays would pay US\$70 million and accept NYAG censure. At the same time, Barclays agreed a statement of core facts in respect of its wrongdoing, which included admissions as to various allegations in the NYAG Complaint as well as admissions of breaches of federal securities law. These breaches of ESG led to a loss in shareholder value.

Certain US investors in Barclays, in particular holders of American Depositary Shares, have been compensated following the US\$27million

settlement of a US litigation. However, Barclays has thus far refused to treat investors in its shares that are traded on the London Stock Exchange as no less equal in the payment of compensation.

Woodsford has brought these issues to the attention of institutional investors and helped them organise into a group seeking compensation and accountability in London. The matter is ongoing.

More ESG cases in the pipeline

The lawyers and other professionals at Woodsford are in the vanguard of ESG accountability. We are working on several more significant and high value cases, where some of the world's largest businesses have failed in their ESG obligations, thereby causing loss to shareholders, customers and other stakeholders. We expect to announce many more engagements over the coming months.



About Woodsford

Founded in 2010 and with a presence in London, New York, Philadelphia, Brisbane and Singapore, Woodsford is a leading ESG, access to justice and litigation finance business. Whether it is helping consumers achieve collective redress, ensuring that inventors and universities are properly compensated when Big Tech infringes intellectual property rights, or helping shareholders in collaborative, escalated engagement up to and including litigation with listed companies,

Woodsford is committed to ESG and access to justice. Working with most of the world's leading law firms, our strength lies in the combination of our legal experience, investment, business and technical expertise and significant financial resource.

For further information, visit www.woodsford.com