

# BRIEFING

## DEBATING DISCLOSURE: THE PROS AND CONS OF CORPORATE TRANSPARENCY



Network UK



## ABOUT THE UNITED NATIONS GLOBAL COMPACT

As a special initiative of the UN Secretary-General, the United Nations Global Compact is a call to companies to align their operations and strategies with ten universal principles in the areas of human rights, labour, environment and anti-corruption.

Launched in 2000, the mandate of the UN Global Compact is to guide and support the global business community in advancing UN goals and values through responsible corporate practices.

With more than 10,500 companies and 3,000 non-business signatories based in over 160 countries, and more than 60 Local Networks, it is the largest corporate sustainability initiative in the world.

## ABOUT THE GLOBAL COMPACT NETWORK UK

We are a member-based organisation and official Local Network, representing UK organisations that are Participants and Signatories of the UN Global Compact.

Through an extensive programme of activity, the UK Network supports its members to implement the UN Global Compact's Ten Principles, which cover human rights, labour, environment and anti-corruption, and to advance the Sustainable Development Goals.

For more information, follow us on LinkedIn and Twitter (@globalcompactUK) or visit our website at [unglobalcompact.org.uk](http://unglobalcompact.org.uk)

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A validated conflict-free coltan mine in the Democratic Republic of Congo. Coltan is an ore for the rare metal tantalum, which is heavily used in the electronics industry. Fragile governance in the DRC has left it vulnerable to corporate abuse, as evidenced by many high-profile cases covering human rights abuses, bribery and tax evasion.



# Debating disclosure: the pros and cons of corporate transparency

Do the risks of disclosing too much sensitive or damaging information in your reporting outweigh the benefits of demonstrating to your stakeholders that you take ESG seriously?

Companies are facing increasing demands from their stakeholders to be more transparent about their business practices and exposure to risks through their ESG performance. However, increased transparency can expose companies to legal jeopardy, reputational risk and other challenges, pushing them to be less transparent.

Above: Protesters in San Francisco, responding to reports of hazardous working conditions and underage workers at the supplier used to make iPhones. The tech manufacturing sector, which was included in the Corporate Human Rights Benchmark for the first time in 2019, scored particularly poorly. (© Annette Bernhardt)

A recent UN Global Compact Network UK event explored this tension through a range of case studies, roundtable sessions (see panels overleaf) and a formal debate. The programme was designed to build a better understanding of the risk/return profile of transparency and thereby help companies to balance competing interests. The debate's motion was: "This House believes that companies should only put ESG information into the public domain when they are legally required to do so."

At first glance, this may seem an extreme motion to propose. And certainly, in the corporate sustainability bubble – where

transparency is advocated, sustainability reports lauded and the 70% of the FTSE 100 that are talking about sustainability in their reporting are commended – one could think that this debate has been had and that transparency is only a positive thing.

But there is evidence to suggest this is not necessarily the case. The chart overpage is taken from the results of the [2019 Corporate Human Rights Benchmark](#). Based on publicly available information, the benchmark analyses 200 companies from four industries considered high-risk in human rights terms: agriculture, apparel, extractives and ICT manufacturing. The results show that around

This briefing is based on a recent UN Global Compact Network UK event:

### Debating disclosure: the pros and cons of corporate transparency

#### Speakers

Márcia Balisciano

Sarah Ellington

Ian Hagg

Catherine Howarth

Baroness Helena Kennedy QC

Steve Kenzie

Sally McNair Scott

Tom Salisbury

Ken Thompson

Charles Tilley OBE

Chair, UN Global Compact Network UK

Legal Director – Litigation and Regulation, DLA Piper

Director of Responsible Business, DLA Piper

CEO, ShareAction

Director, International Bar Association's Human Rights Institute (IBAHRI)

Executive Director, UN Global Compact Network UK

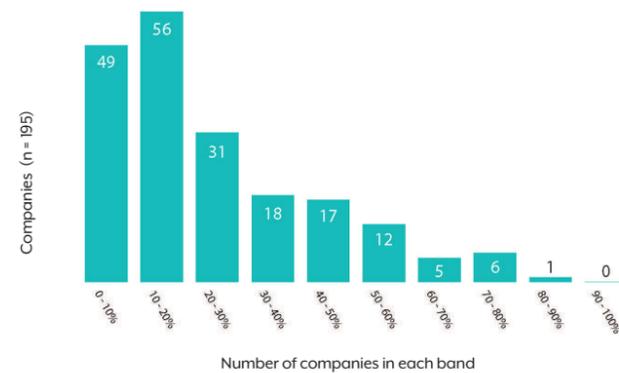
Group General Counsel, Control Risks

Senior Sustainable Business Manager, Vodafone Group

Chief Compliance Officer and General Counsel for IP, Privacy & Governance, RELX

Interim CEO, International Integrated Reporting Council

## 2019 CORPORATE HUMAN RIGHTS BENCHMARK: OVERALL SCORES



a quarter of those surveyed scored 0-10%, while half failed to meet any of the five basic criteria for human rights due diligence.

While these numbers are alarming, such nearly perfect intransparency is almost certainly not by chance. Rather, it appears to be the result of a policy built on the perception that putting certain information in the public domain, even if it is 'good news', poses a risk.

"The conservative view used to be that putting nothing out there and keeping your head down was the most risk-averse

approach," explained one participant. "But now the prevalence of indices that are ranking companies based on information in the public domain is shifting that calculation – being non-transparent exposes you to reputational risks because you're going to score poorly in the indices."

### DEBATING DISCLOSURE: THE CONS

The debate opened with a legal perspective, the first speaker explaining why lawyers resist ESG disclosure. "Our responsibility is to protect clients, and that often means

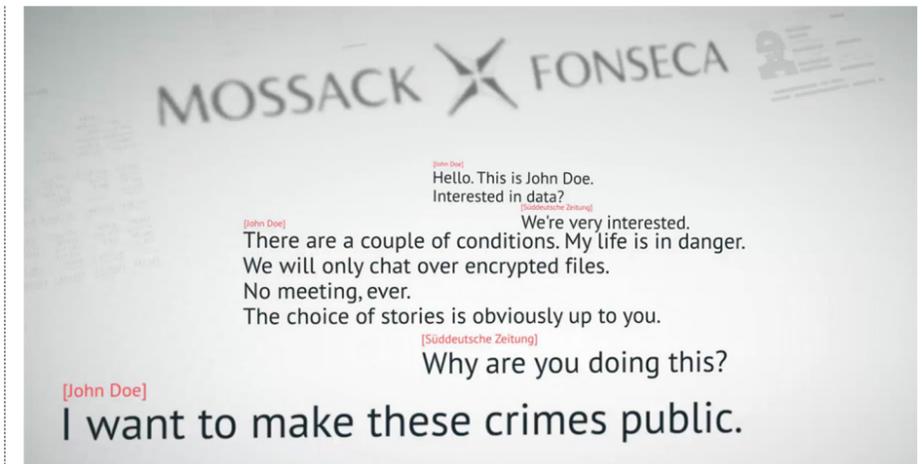
protecting them from their better nature," they said. "Why disclose something you don't have to?" Companies and their directors and officers are, after all, liable for statements they make, no matter where they make them. In reality, they argued, honesty is not rewarded. Complete transparency means a company reporting on its shortcomings, which comes with consequences. "It would be really nice to think if a company discovered it had fallen short of a particular standard – and acknowledged it – that it would receive credit, provided it put in place some remedial actions," said the speaker. "However, in our sharp-toothed, media-driven world, life is often not like that."

Those who are cautious about transparency tend to shift the responsibility for disclosure firmly onto legislators and regulators, arguing that to do otherwise can actually do more harm than good. If a business is free to pick and choose what is made public, this can create an environment where some businesses publish information while others do not, whether for legitimate or nefarious reasons. This results in an unlevel playing field for all stakeholders. Furthermore, ESG information taken out of context, without an opportunity to explain metrics, can be manipulated and misconstrued if such information is not being reported by all competitors in business

## Those who are cautious about transparency tend to shift the responsibility for disclosure firmly onto legislators and regulators

or if the information being reported by the business in question is not accurate. A free-for-all voluntary approach to reporting by businesses actually gives governments a free ride. It was argued that asking governments to step up and increase the demands that they're making on companies to be more transparent would help level the playing field for all.

The UK Modern Slavery Act was given as an example of this. One speaker explained how, while drafting the legislation, the government was falling back on tired tropes that businesses don't want to report and don't want to be transparent. However, a few leading companies argued against this, saying: 'Yes, we do. We want a level playing field, we want everyone talking about this,



Above: The conversation between Süddeutsche Zeitung reporter Bastian Obermayer and the whistleblower who leaked the Panama Papers. The documents from the law firm Mossack Fonseca revealed tax fraud and money laundering on a massive scale. Following the Bribery Act and Modern Slavery Act, there is strong pressure on government to create equally robust legislation to improve transparency and accountability in the financial sector.

so that those who are already talking about it aren't disadvantaged.' Business driving the agenda forward succeeded in increasing ambition on the part of government, a dynamic described in the climate action space as an [Ambition Loop](#).

Based on the near universal support and commendation for the Act, perhaps companies would be better served redirecting their energy and resources away from

voluntary disclosure and reports, focusing instead on advocacy and persuading government to improve and expand regulation.

The argument against voluntary disclosure does not represent a reluctance to act responsibly towards all stakeholders; the days of shareholder return as the sole business objective are – hopefully – over. But the efforts of business to promote and support ESG issues

## DISCLOSURE DILEMMA I: WHAT WOULD YOUR COMPANY DO IF...

You are a multinational company operating in the manufacturing sector. While you consider the carbon intensity of your business to be low, you have been publishing greenhouse gas emissions data for a number of years to meet regulatory requirements. At your last AGM, shareholders filed a resolution requesting that you disclose more information on the risks of climate change to your business and the financial impacts associated with these risks in your next annual report. As other companies in your sector have not disclosed this information, you are concerned that publishing these figures will draw negative attention to your business, as you may be perceived to be more vulnerable than your peers. Your reporting team have also expressed concerns over the quality of the information you currently have available, as you have not undertaken a specific climate risk assessment.

- Would you disclose the risk and financial impact information investors are requesting? Why/why not?
- How would you communicate the uncertainty around this information if you did choose to disclose it?

- Open a more direct dialogue with shareholders and engage with them to discuss details, before taking any action. This would involve setting out a clear timeframe and plan for how to go about improving disclosure in this space, while explaining the challenges and why it might take time to achieve.
- Collaborate with your industry: speak to other companies in the sector, or perhaps industry bodies, to develop a joint approach. This would enable consistency between organisations and reduce the risk of putting your company's head above the parapet.
- Tackling climate change is an urgent issue and investors rightly don't want to wait, so information needs to be gathered swiftly – this involves collaboration between internal stakeholders from other parts of the business. And rather than putting information out in isolation, it should always be considered as part of a bigger picture.
- However, while a proactive approach is necessary, it's important to engage and do your homework before rushing too quickly to disclose things you're not comfortable with. Ultimately, if information has to be put out quickly, the company needs to be transparent about any uncertainties or assumptions surrounding the data.

## DISCLOSURE DILEMMA II: WHAT WOULD YOUR COMPANY DO IF...

The Corporate Human Rights Benchmark (CHRB) has just been released and your company has scored 0/100. You feel that this result is damaging your company's reputation and does not fairly reflect your actual performance, which is close to the average for your sector.

Having reviewed the methodology of CHRB, you can see areas where just by disclosing existing policies and practices you could significantly improve your ranking. When you propose this to your executive management team, they say 'we don't want to feed the trolls'. They believe that engaging on this issue could lead to an insatiable demand for ever more disclosure and eventually an even greater reputational risk. Therefore, not engaging is more prudent.

- How do you deal with this scenario?

- Competitors had more information in the public domain, so they scored higher, which means the 'trolls' were already drawing unfavourable

comparisons. This causes a real reputational risk, which would have been easily mitigated by putting information into the public domain.

- Saying nothing does much more damage and is far more likely to feed trolls than any disclosure. There's no question that respecting human rights is the right thing to do, so it makes sense to communicate the work you are doing in this space.
- It is vital to explain to the executive management team why reputation is so important to all stakeholders, including new partners and customers (as well as existing ones), investors, NGOs and prospective employees. A number of new opportunities could be created if more information was disclosed and the company moved up in the ranking.
- Another tactic was to question why the company is putting in time and effort – as well as investing money – to make progress in human rights if it fails to disclose and reap the benefits of that work.
- Consider the changing context under which the company operates: younger people, the next generation of customers and employees, have a very different view on transparency and risk.

### DISCLOSURE DILEMMA III: WHAT WOULD YOUR COMPANY DO IF...

You have a high-profile speaking opportunity at the UN Forum on Business and Human Rights. You would like to discuss your company's activities to reduce child labour in your supply chain. It is widely known to be an issue in your sector. You would prefer to share what you are doing about it, rather than giving the impression you're doing nothing. However, your legal advisors recommend not even participating because they perceive that there's a greater reputational risk from admitting that there is an issue.

- What are your considerations?
- What would you do in this situation? Why?

- When choosing to use a high-profile platform such as the UN Forum, the first step would be to consider all your stakeholders before deciding whether this is a suitable platform. If so, it would also be helpful to have support internally from various teams throughout the company.
- Talk about the subject as a wider issue in the sector, explaining that this is a problem encountered within this particular industry, as well as in others. This may involve arming yourself with information and evidence to help influence colleagues in the legal team first.
- Ensure that the company is comfortable with everything it is doing on this issue, that it has robust systems and processes in place, and that it is addressing this issue as much as it can.
- You must also demonstrate strong leadership and policy, with clear messaging in place. With a multi-territory organisation, the policy also needs to be well-supported throughout, so it would stand up to scrutiny if someone was to look into the different parts of the business.
- Consider whether you actually have a good enough story to tell. Are there other companies, or even competitors, out there who have already put better systems in place than you – or systems that are perceived to be better?

shouldn't distract from the essential role of governments to create the underlying legal framework.

"It is gratifying to think that companies can save the world, but they can't," said one speaker. "Well-crafted, well-drafted legislation, which moves the agenda forward and is principle-based and a part of the evolution in process, plays a positive role in this agenda."

#### DEBATING DISCLOSURE: THE PROS

Transparency on ESG performance is considered by many to be a source of competitive advantage, helping firms build the trust of consumers, employees, regulators, the public and, crucially, investors. Companies who want to survive and thrive in the long-term should therefore choose to put a good deal more ESG information into the public domain than they are legally required to.

Those who support full disclosure are very much against a blanket regulatory response, with the resulting box-ticking that would be involved to meet legal requirements. In the real world, all businesses are different and it's therefore critical to think through the risks in the context of the specific organisation's strategy, how it creates value through its business model, and the decisions that it makes.

Companies need to adopt and articulate a clear purpose beyond profit maximisation to attract investors, staff and customers. Laws on corporate reporting will inevitably become more demanding, so getting ahead of the game is an exercise in basic risk management.

As far as investors are concerned, many don't just *want* this sort of information, they *need* this information to fulfil their own legal obligations. Recent changes in UK and EU regulation mean investors now require high-quality disclosures from companies, whether or not it's mandatory for those companies to publish it. Analysis from Deutsche Bank and PRI supports this, showing that companies disclosing more and better-quality ESG data are paying a lower cost of capital.

Transparency is also critical for recruitment and retention – LinkedIn's [Workplace Culture Trends report](#) suggests that 71% of 22 to 27-year-olds would consider taking a pay cut to work in a company whose mission and

### To attract employees, businesses need to be able to present an authentic narrative of how they're creating societal value and, more importantly, how this links to the individual employee's values

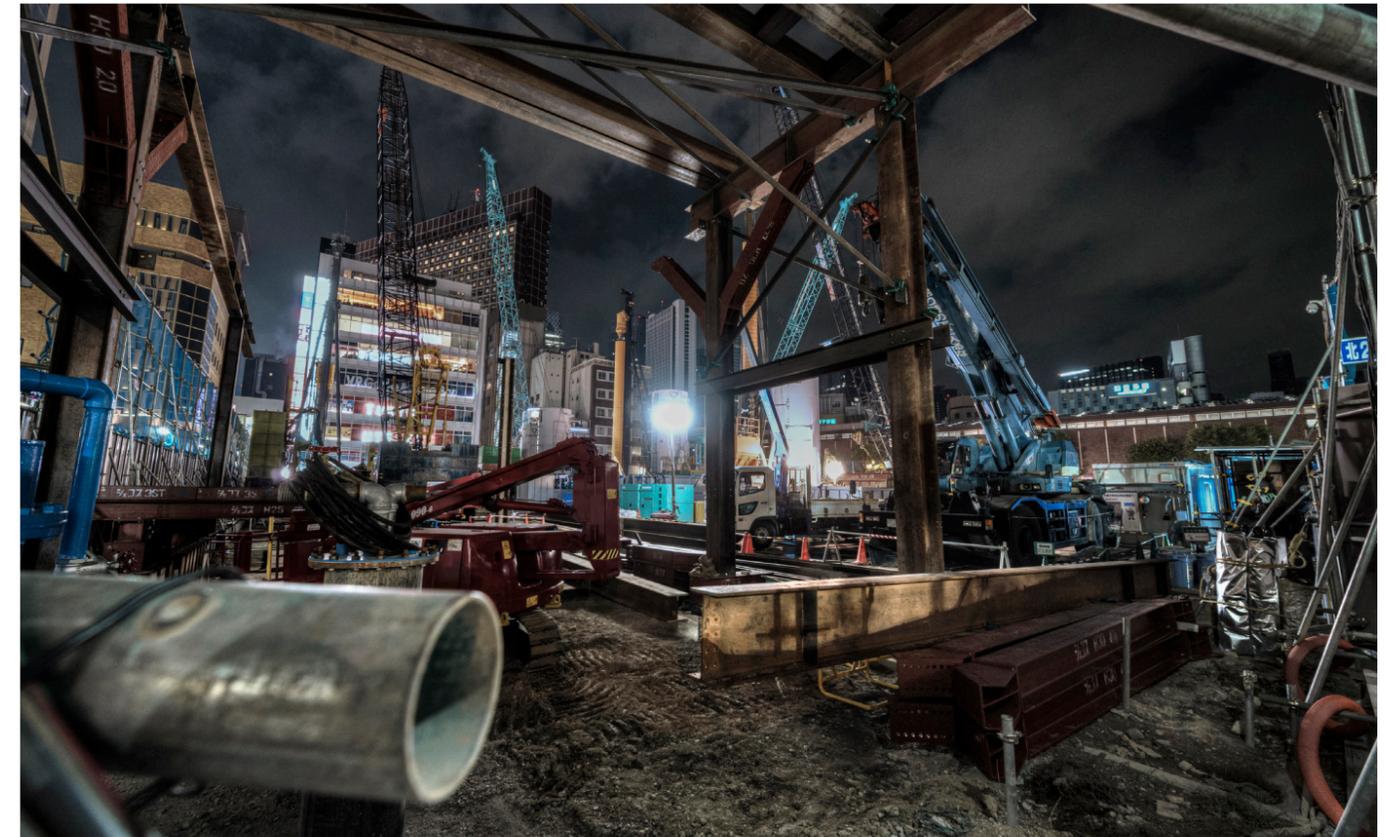
values align to their own. In order to attract employees, businesses need to be able to present an authentic narrative of how they're creating societal value and, more importantly, how this links to the individual employee's values.

Disclosure also builds brand loyalty. As tempting as it may be to keep bad ESG performance hidden away, chances are it will come to light anyway. "Establishing the confidence of your stakeholders can mean having the courage to share some of the bad news," said one speaker. It is safer and far more strategic to be open, get ahead of the issue, and show willingness to tackle the challenges. Transparency relies on effective communication: telling people what you are doing, how you are doing it, and what the results of that have been.

The [UN Guiding Principles](#) require companies to put reasonable procedures in place to undertake due diligence. From a legal standpoint, when a company is transparent about what it has done and what policies and procedures it is using, it is also being transparent about what it has not done.

"For businesses to be truly sustainable and fiscally responsible, they need to take ownership of the issues – and that means going beyond the minimum expectations," said one of the participants. "To build trust and reputation is good business, it demonstrates that business is a force for good."

Staying true to purpose requires accountability. Accountability requires



Above: Construction in Tokyo, Japan. From a climate change perspective, high-risk transition sectors, such as building and construction, pose a transparency dilemma and potential reputational risk for investment companies. (© B Lucava)

transparency. And transparency means disclosure well beyond the legal requirements. Going above and beyond these requirements for transparency is essentially preparing for the inevitable.

#### THE VERDICT

Both teams were commended for presenting their cases but eventually, those arguments in favour of voluntary disclosure prevailed. The moderator concluded: "They are saying: 'We should really go about this in a willing and voluntary way, and law should not be the great galvaniser of change.'"

So, while a careful balance needs to be struck between honest disclosure and protecting a company's interests, as the reporting climate evolves and regulation increases, it would appear that greater transparency is the safest approach to take. ■

### DISCLOSURE DILEMMA IV: WHAT WOULD YOUR COMPANY DO IF...

Reviewing business practices in offshore operations to ensure ongoing compliance with the UK Bribery Act, your team discovered a practice of giving gifts to prospective customers in an Asian country. Further investigation revealed that, on occasion, these gifts might be cause for concern. Your company immediately updated its policies and initiated a training scheme. It was agreed that this episode would remain confidential to avoid any potential legal action and/or reputational damage. However, during an informal gathering under Chatham House Rules, a colleague has shared some of this story. An attendee at the gathering recounted this to a third party who deduced the identity of your company and told the press about it.

- What would you do next?
- What would you do if you could go back? Would it be better to disclose from the very beginning?

- Going back in time, it would have been prudent to review the risks in advance and put in policies up front, in order to address the issue before things reached this stage.
- At this point, however, damage limitation kicks in and it is essential to respond quickly and honestly in the media. It may also be wise to approach stakeholders to find out how they feel about the issue. Both of these would involve a clear explanation of what the company's procedures are and what action has been taken since this came to light, demonstrating that lessons have been learned.
- In terms of reporting, the situation should also be included in the next company annual report, focusing on how the problem arose, how it was dealt with and what policies have since been put in place.



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