

## **True & Fair – Frequently Asked Questions**

Social Value International commissioned **Bates Wells** who instructed **George Bompas KC** to establish a new legal opinion and interpretation of ‘true and fair’ under the law as it applies to UK companies in the context of sustainability. The opinion was published on 8th January 2024.

### **1. What is the true and fair requirement?**

“The directors of a company must not approve accounts for the purposes of this Chapter unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss” (Companies Act 2006, Section 393).

### **2. Why was the opinion commissioned?**

There are increasing non-financial reporting requirements on companies regarding sustainability.

There has never been a legal opinion on what true and fair opinion means for financial accounts in the context of sustainability.

“Sustainability issues are increasingly affecting accounts including asset impairment, current and future commitments” (Opinion, para 41)

### **3. What does the opinion say?**

The opinion puts no new legal demands on directors. However, it is the first to apply the true and fair requirement to sustainability information.

The opinion reiterates the established principle that what is a ‘true and fair view’ is a legal concept that will evolve and change over time, and which involves judgement and discretion from directors and auditors.

The opinion considers implications of sustainability for the true and fair requirement and:

- affirms directors' existing legal responsibilities to be mindful and 'exert themselves'
- highlights relevant accounting standards in the context of sustainability e.g. asset impairment and constructive obligations
- reflects on the appropriate disclosure which could be as a note to the accounts
- states that company directors may deliberately choose to structure commitments in such a way as to create constructive obligations which impact upon the accounts.

#### **4. What is a constructive obligation?**

A constructive obligation is,

"an obligation that derives from an entity's actions where; by an established pattern of past practice, published policies or a sufficiently specific current statement, the entity has indicated to other parties that it will accept certain responsibilities; and as a result, the entity has created a valid expectation on the part of those other parties that it will discharge those responsibilities."

– Paragraph 10, International Accounting Standard 37 (IAS 37)

#### **5. What does this mean for UK company directors?**

The opinion empowers directors who want to include sustainability in their financial statements.

It specifically states, as noted above, that directors might want to deliberately structure commitments in such a way as to create future or even present year obligations which impact upon the accounts. An example might be where a company commits to buy carbon credits to offset its emissions on an ongoing basis.

And it notes that, in light of emerging international sustainability standards, directors and auditors "now need to consider the relevance of new forms of disclosure of sustainability-related information to the production of accounts."

## **6. A current example**

Staffordshire Chambers of Commerce has already taken a lead in disclosing its impacts on climate change in its audited financial statements.

Under the true and fair requirement, its directors decided to include a note to their accounts, for the year ending 31 March 2023, that estimates and values the social cost of its use of carbon. They did this as they recognized the urgent need to respond to climate change and provide resilience to the organisation, amongst other reasons. The directors recognised the businesses' carbon use and the impact on the environment as a cost of doing business through the note to the accounts. They are now discussing whether to pay this to a third party.

In the Directors' Report, there is a statement that future financial statements will address their contribution to other sustainability issues in line with the UN Sustainable Development Goals. Read the accounts [here](#).

## **7. Where can you read the opinion in full?**

George Bompas KC's opinion on the True and Fair requirement can be found [here](#).