ANALYSIS

The ESG Report: Overview – From buzzword to bona fide?

Our third annual ESG report reveals that firms are more willing to substantiate their ESG credentials. Is the industry finally moving away from paying lip service and towards embracing ESG in earnest?

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ESG

'Greenwashing is a new phrase, but it's quite an old idea. It's fundamentally, are you doing what you say you're doing? While it has a new title, the advice is still as it has always been. We say to clients, how are you backing up your claims? It's that level of clarification that companies need to focus on.'

The words of Anna-Marie Slot, Ashurst's global ESG and sustainability partner, apply not only to the dilemma faced by clients when tackling thorny issues around environmental, social and governance (ESG) but also to analysing the credentials of the top 25 *Legal Business 100* and top 25 Global London firms advising them.

This time last year, *Legal Business* was faced with the fundamental paradox of attempting to assess which firms were genuinely going beyond the empty platitudes to integrate ESG imperatives into their business models. Firms were more reticent in their responses to our questionnaire with only a 52% response rate from the firms approached, and there was a definite sense that, against the backdrop of Russia's catastrophic invasion of Ukraine, firms were reluctant to engage for fear of making bold statements around their ESG principles that would not stand up to proper scrutiny.

For context, 2022 was the year that accusations of greenwashing started to be bandied around, epitomised by the unedifying example of German police raiding the offices of asset manager DWS and Deutsche Bank, its majority shareholder, as part of an investigation into allegations of greenwashing. In short, any professional falsely claiming to be an ESG expert, including the lawyers, had every reason to be spooked.

> 'Greenwashing is a new phrase, but it's quite an old idea. It's fundamentally, are you doing what you say you're doing? The advice is still as it has always been. We say to clients, how are you backing up your claims?' *Anna-Marie Slot, Ashurst*

This year, while a slightly improved response rate to our survey of 60% is heartening, the challenge endures that firms are often vague at best when asked to identify clients and mandates they have turned down due to a lack of alignment with ESG values.

However, a mirror must be held up to the profession if any material progress is to be made, so *LB* again strives to identify firms that are simply talking the talk, and those that are walking the walk on delivering their ESG policies in both external client-facing work and internal policies.

No buzzword complex

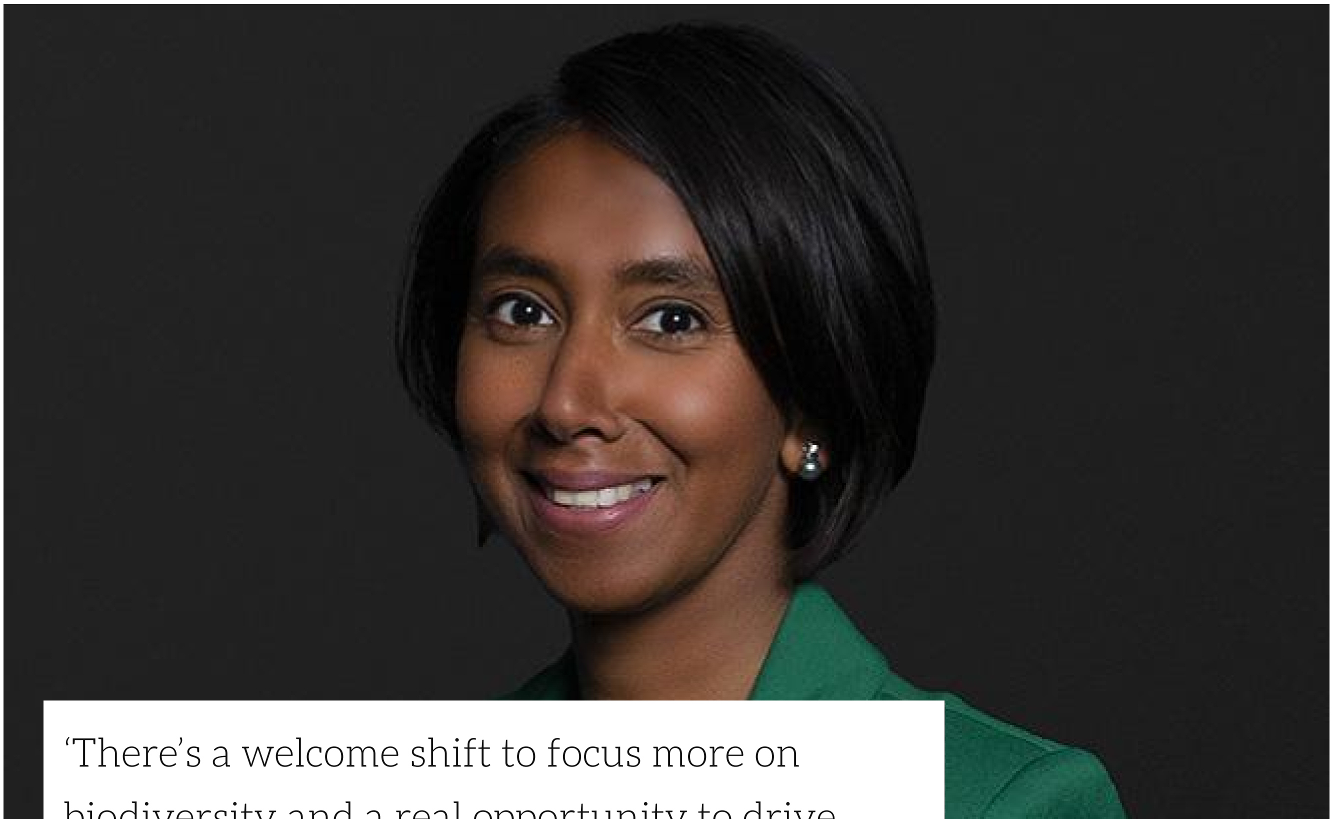
Of course, the more cynical among commentators might argue that much of the impetus behind firms finally taking ESG seriously is because it is no longer just a 'nice to have' consideration but a necessary one.

‘ESG is not a buzzword. Fighting ESG is like fighting gravity. Some people get tired of the acronym, but whether you call it ESG, sustainability or impact, there is so much happening – so many rules and regulations coming out of Brussels, and also the US – that is having a big impact on business.’ The views of Jeroen Ouwehand, Clifford Chance (CC)’s former senior partner and head of its global ESG board, are shared by many in the market. ESG-related regulation cannot be ignored and is forcing leaders to view ESG as a business-critical concern.

Stephen Shergold, partner and head of the environment and societal team at Dentons, strikes a similar note. ‘The key trends over the last year for me have been the evolution of supply chain compliance work, the increase in requests from in-house counsel to understand the baseline of regulatory frameworks, and an increase in the need to substantiate the claims that you make.’

Certainly, many firms seem increasingly aware that other stakeholders in their supply chain may hold them to account on ESG imperatives.

Sophia Adams Bhatti, head of purpose and impact at Simmons & Simmons, has also seen developments on that front. ‘A breakthrough of this year is the move to explicitly build into our ESG planning the importance of the full value lens, right from the bottom of the supply chain through to our own work, and the importance of being able to work collectively through that chain,’ she notes.



‘There’s a welcome shift to focus more on biodiversity and a real opportunity to drive private capital towards that. Our clients, particularly the larger banks and asset managers, agree.’ *Sonali Siriwardena, Simmons & Simmons*

Last year’s report found that, while advisers were increasingly having to get their heads around enhanced reporting requirements following stringent EU regulations (including the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation that came into force in 2021 and 2020 respectively), such regulations had no real teeth. Now, many note that this has started to change. Comments Shergold: ‘Regulators are definitely taking a more aggressive approach in pursing directors and officers, and investors are keener to go as far as litigation if they think directors and officers are not doing enough when it comes to ESG.’

Indeed, it is clear that lawyers will have to redouble their efforts to help clients navigate these regulatory pitfalls, even as they continue to ramp up, with the Corporate Sustainability Reporting Directive (CSRD) slated to take effect in 2024.

As Nicolas Lockhart, environmental global arbitration, trade and advocacy partner at Sidley, observes: 'One of the challenges facing clients is different regulatory requirements in different places, even pushing sometimes in different directions. Recently, we've seen some US state jurisdictions take "anti-ESG" actions against some companies, with those same companies facing very demanding ESG requirements elsewhere.'

After protracted ESG policy delays since the Trump era and, two years on from the US Securities and Exchange Commission ESG Taskforce starting to issue enforcement actions, the US implemented the Inflation Reduction Act of 2022. Slot, who became Ashurst's first global ESG and sustainability partner in 2019, hails the Act as 'a real game changer', as it allocates resources to reduce carbon emissions, promote renewable energy and reduce healthcare expenses.

Meanwhile, those firms that responded to our survey are demonstrating slightly less reticence in showcasing tangible examples of practising what they preach, at least on paper.

Kate Fergusson, Irwin Mitchell's head of responsible business, points to a new ethics committee as part of its responsible business strategy. 'For us as a business it is about having robust governance in place and ensuring that we are walking the walk as well as talking the talk,' she says.

Slot asserts: 'We always stress-test what we're doing against what's happening in the market. Our strategy hasn't changed but there has been iterative change, such as feeding back to clients and responding to client feedback.'

In a similar vein, some firms indicate that they have implemented policies aimed at preventing accusations of greenwashing, while others admit that they are still in the process of navigating this issue and developing appropriate measures.

Latham & Watkins states it has a three-pillar programme designed to ensure that there is oversight from its three global co-heads, guaranteeing that the principles the firm subscribes to are effectively incorporated.

Danielle Reyes, Washington DC-based partner in Goodwin's financial industry group, points to the hire in April of Ami Morgan as a director tasked with leading the firm's ESG programme. Morgan was previously director of strategic planning for the national security council of the US government.

Says Reyes: 'We don't disclose much publicly yet because we need to be confident about the data integrity before we report it, so part of Ami's mandate for this year will be getting a good sense of where the information that we are making decisions based on is coming from, and then trying to standardise that across all of the different components of our programme, because it's definitely not standardised right now.'

Reyes elaborates that there is also a phenomenon called 'greenhushing' and 'green bleaching' where firms are deliberately providing less information about their ESG programmes than previous years, to avoid coming under fire for not meeting targets.

Client Earth

As with our previous two ESG reports, the more established E facet of ESG remains easier to quantify than the other two letters in the acronym, with firms more forthcoming about discussing their environmental objectives.

Baker McKenzie, DAC Beachcroft and Osborne Clarke are among the firms that highlight their emissions targets, with Bakers aiming to reduce scope 1 and scope 2 carbon emissions and to switch to renewable energy by 2030. DAC has been focusing on reducing scope 1 and 2 emissions and intends to concentrate on scope 3 emissions. For its part, OC has committed to halving emissions from a pre-pandemic baseline year to the end of 2030. Meanwhile, Eversheds Sutherland's recent work includes advising the project sponsors on the financing of the first hydrogen facility in Africa, which was announced at the COP27 conference in Sharm El-Sheikh last November.

Several advisers, including Sonali Siriwardena, partner and global head of ESG at Simmons & Simmons, acknowledge that biodiversity has emerged as a more pressing concern among clients.

'There's a welcome shift to focus more on biodiversity. There were some key events, such as the Biodiversity COP and the agreement of the High Seas Treaty that have provided new momentum to the regulation that's coming down the tracks. The oceans have been historically underinvested. Out of the 17 UN Sustainable Development Goals, SDG 14: "Life below Water" is the least invested of them all. There's a real opportunity to drive private capital towards that and our clients, particularly the larger banks and asset managers, agree with that,' Siriwardena asserts.

Lockhart also notes that the draft CSRD standards include substantive provisions that will require many companies to develop a Paris Agreement-aligned climate transition plan, and a biodiversity transition plan, as part of their ESG policies. 'The EU hopes these transition plans will change corporate ESG performance, up and down the value chain,' he says.

In last year's report, Jeff Twentyman, then head of sustainability (and now senior consultant) at Slaughter and May, warned of the importance of viewing ESG holistically if any substantive progress was to be made: 'ESG is a whole-business proposition – you can't just do part of it. You need to change everything: the advice you give clients, and the way you operate yourself.'

> 'There is often a big focus on the environmental side because it is easier to measure. Environmental progress cannot happen without proper engagement in society.'
> *Michael Watson, Pinsent Masons*

This year, firms point to social considerations including fair wages amid the prevailing cost of living crisis, as well as an ongoing focus on diversity and inclusion (D&I) and fostering a healthy work-life balance as priorities.

Bola Gibson, head of inclusion and corporate responsibility at OC, comments: 'One of our biggest pieces of work over the last year was the development of our wellbeing strategy. The firm has introduced a new governance structure and three-year plan to tackle the root causes of work-related poor wellbeing.'

Judith Green, chief communications and strategy officer at Eversheds Sutherland, speaks of the holistic approach to ESG: 'To be a responsible business, which is how we frame that for our internal discussions, you have got to have equal strength across all of those three elements, because they are all linked.'

Meanwhile, Michael Watson, partner and head of climate and sustainability advisory at Pinsent Masons, is alive to the challenges of giving the E, the S and the G equal weight: 'There is often a big focus on the environmental side because it is easier to measure. Some of the social goals are harder to measure, which means that some businesses don't report on them as effectively. The reason they are all categorised together is because they are all linked. Environmental progress cannot happen without proper engagement in society.'

Despite the inevitable challenge of comparing different data sets, Green is sanguine: 'It is just a matter of time before the S becomes as measured a metric as the E.'

Reputation and attraction

It has arguably taken the legal industry longer than professional services peers to become wise to ESG as a business and governance imperative. Nevertheless, there are signs that the legal community is catching up with its banking and investment counterparts, which on paper should have a post-financial crisis, regulation-imposed edge on such matters.

Indeed, being behind the curve on realising that the younger generation of lawyers is increasingly interested in the ESG credentials of prospective employers is a luxury few can afford, even as the battle for talent continues to rage.

With that in mind, DAC Beachcroft, Taylor Wessing, DWF and Goodwin are among the firms which have made ESG-focused hires.

Taylor Wessing's head of sustainability, Claire Rainsford, joined from EY in April. She notes: 'People are asking for evidence to make sure we are really [implementing ESG policies]. In my current HR team over the last year or so there has been a shift, and people actually want to check you're doing it.'

Simmons' Bhatti and Siriwardena joined in 2019 and 2022 respectively.

Bhatti comments: 'It wasn't like nothing was being done before our roles were created, so many things were being done in old money names – corporate responsibility or pro bono, or charitable giving, or green activities. They weren't necessarily badged as ESG but they are absolutely part of what we now call ESG.'

For many firms, half the battle is not just having the right policies in place, but ensuring they are embedded properly. Kirsty Green-Mann, head of corporate responsibility at Burges Salmon, says: 'Policies are important to a degree but what is more important is how much the policy is lived and breathed by the culture of the organisation.'

While it would be disingenuous to suggest that the younger generation of lawyers is not driven by money, there are increasingly reputational factors at play around recruitment.

Kirsty Rogers, DWF partner and global head of ESG comments: 'I am increasingly asked to engage with the summer vacation schemes and career events. They are all asking about inclusion and diversity particularly but also about our approach to the environment and how we look after our colleagues and communities. They don't want to be associated with businesses that don't commit to the planet and its people.'

And, looking at the underwhelming diversity stats relating to ethnicity and gender below, it is clear that the perennial problem of a lack of senior women and people of colour in the industry is still a long way off being solved.

In last year's report, CC's Ouwehand shared a cautionary tale about how easy it can be to miss the mark, recalling the time the firm issued a press release proclaiming hundreds of 'ESG lawyers'. The cohort had completed just one six-week training programme.

For its part, Travers Smith recently introduced its ESG and Sustainable Finance Academy, an internal training programme, open to all lawyers at the firm, with the course running for a full ten months.

Doug Bryden, Travers' head of environment and operational regulatory, notes: 'We want our people to start opening their eyes to opportunities around ESG. It's not just trading oil and gas, traditional commodities and other derivatives, but looking at new voluntary carbon credits and other green financing developments. It's these new synergies around ESG we want our lawyers to embrace, not just focusing on regulatory compliance and legal risks.'

And yet, if *Legal Business* has learned anything from our three annual ESG reports, it's that the cultural overhaul required to fully embed ESG principles cannot be achieved overnight. Nevertheless, firms must mobilise to achieve more substantive progress before our next report, since ESG is clearly not just a flash in the pan.

As Ouwehand concludes: 'ESG is going to continue to impact business. Obviously, the energy transition is part of ESG, and climate change and biodiversity loss are probably the biggest challenges to humanity. ESG is here to stay, it's certainly not a fad or a buzzword.' LB

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Return to the ESG report contents

The mandate question

James Watson, Osborne Clarke (OC) projects partner and international co-head of ESG, discusses the familiar paradox at the core of which clients or mandates advisers will accept or reject based on ESG considerations.

'I spoke to another firm this week and asked what they were doing about turning away work for clients that don't align with the firm's values. They are still driven by revenue,' he says. Watson insists OC's approach is more scrupulous: 'We review all relevant opportunities on a case-by-case basis and we're prepared to forgo certain revenue opportunities to make sure we're aligned with our ethical stance and ESG principles.'

A handful of firms point to frameworks enabling them to veto certain mandates, however, many of these appear to be designed to root out illegality rather than questionable mandates from an ESG standpoint.

The response from Freshfields Bruckhaus Deringer reads: 'We have robust processes in place to assess all new clients and mandates. These processes take into account multiple factors, including compliance with our legal regulatory and professional obligations.'

Similarly, Bird & Bird responds: 'We are careful to check that there are no regulatory or financial risks in working for a particular client. We also seek to identify unethical business practices, sanctions targets and areas of work that are typically higher risk from a fraud and/or anti-money laundering perspective and decline to act for those clients that don't meet our criteria.'

Slaughter and May is similarly vague: 'Before accepting a new client we assess a full range of criteria. Any partner can challenge any potential new client that is proposed. We have turned down work linked to all these criteria over recent years.'

Linklaters echoed that sentiment: 'Matters may be turned down for a range of reasons and these include occasions when we consider that the nature of the work may be contrary to the firm's values.'

Disappointingly, and in a similar vein to last year, the top City and US firms in London prove reluctant to publicly distance themselves from specific clients where there is a perceived disconnect on ESG grounds, with many again pleading confidentiality.

Linklaters notes: 'While, for confidentiality reasons, we cannot disclose examples externally, we do use such decisions to inform and, where appropriate, strengthen our processes.'

Ashurst makes a similar argument: 'As a result of current processes and assessments performed in onboarding new work, or indeed new clients, we have definitely declined to act on certain matters. We are unable to share examples due to confidentiality considerations.'

OC's Watson is slightly more open: 'We have guidance and processes in place when we are accepting new clients and matters. We would no longer be able to accept any oil and gas instructions or coal mining mandates. That is quite unique.'

Emma Tait, real estate partner at Taylor Wessing, argues: 'This is not a tickbox exercise and, while firms have specific values by which we can all lead by example and which may well see firms declining to act on certain matters, we also have a role to play in helping clients adopt responsible business practices. This includes the transition to a low-carbon economy, rather than simply refusing work without considering the circumstances of any particular matter.'

Elsewhere, Simmons & Simmons is more daring: 'We can't speak to a specific case but since the invasion of Ukraine we have reviewed all matters which have any Russian involvement and assessed whether they are compliant with our values. Our position as a firm is to avoid acting on matters that are either linked to the Russian state or support the Russian economy. This has led us turning away some work, but we believe that this is the right approach for the firm.'

It is clear that advisers remain unwilling to make public disclosures about clients they have distanced themselves from on ESG grounds but, let us hope that they are having more of those uncomfortable conversations with clients, at least behind closed doors.

Diversity stats – ethnicity (% is global unless otherwise stated)

Firm	Lawyers (% BAME)	Partners (% BAME)	Executive (% BAME)	Notes
Ashurst		9		
Baker McKenzie	20	11		UK only
Clifford Chance	33	10		UK only
CMS	14	5	12	
Debevoise	29	15	N/A	US only
Dentons	11	7	11	UK only
DWF	14	4	0	
Eversheds Sutherland	14	9	0	
Goodwin	25	14	27	
Gowling WLG	24	13	15	
Herbert Smith Freehills	15	11	8	
Hogan Lovells	20	9	25	
Irwin Mitchell	9	7	14	
Linklaters	25	12	8	
Mayer Brown	14	10	0	UK only

Firm	Lawyers (% BAME)	Partners (% BAME)	Executive (% BAME)	Notes
Norton Rose Fulbright	22	11	N/A	UK only
Osborne Clarke	11	3	0	
Pinsent Masons	14	5	5	UK only
Reed Smith	36	20	50	
Ropes & Gray	24	15		
Sidley	24	11	N/A	
Simmons & Simmons	16	7	7	Based on responses fromUK, Netherlands, APAC,Middle East
Slaughter and May	18	10	N/A	London and Brussels
Squire Patton Boggs	16	7	N/A	
Taylor Wessing	11	8	6	
White & Case	38	23	14	UK and US

Diversity stats – gender (% is global unless otherwise stated)

Firm	Lawyers (% Female)	Partners (% Female)	Executive (% Female)	Notes
Ashurst		22	41	
Baker McKenzie	55	31		UK only

Firm	Lawyers (% Female)	Partners (% Female)	Executive (% Female)	Notes
Bird & Bird	47	27	28	
Clifford Chance	53	23	N/A	
Clyde & Co	59	29	N/A	
CMS	63	36	45	
Debevoise	49	28	N/A	US only
Dentons	45	30	35	
DWF	63	24	46	
Eversheds Sutherland	55	33	20	
Freshfields	47	28	35	
Goodwin	43	32	40	
Gowling WLG	55	34	23	
Herbert Smith Freehills	51	30	21	
Hogan Lovells	59	32	35	
Irwin Mitchell	80	54	43	
Linklaters	51	27	42	
Mayer Brown	38	19	50	UK only
Norton Rose Fulbright	54	31	46	EMEA
Osborne Clarke	58	27	45	
Pinsent Masons	62	31	32	

Firm	Lawyers (% Female)	Partners (% Female)	Executive (% Female)	Notes
Reed Smith	53	27	42	
Ropes & Gray	51	40	N/A	
Sidley	42	19	N/A	
Simmons & Simmons	29	29	29	
Slaughter and May	52	28		London and Brussels
Squire Patton Boggs	53	26	32	
Taylor Wessing	60	28	33	
White & Case	42	23	43	