

# Combating Greenwashing – Existing Legal Remedies

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## INTRODUCTION

1. Greenwashing occurs where a “business makes claims about its products, services, processes, brands or its operations as a whole, or omits or hides information, to give the impression they are less harmful or more beneficial to the environment than they really are.”<sup>1</sup>
2. Greenwashing may occur via express statements, but it might also be implied through the use of symbols, emblems, logos, graphics, colours, and product brand names.<sup>2</sup> And it may be in relation to:
  - 2.1. A specific product or service, eg labelling a product as ‘eco-friendly’ or ‘recycled’ or ‘natural’ when these descriptions are untrue, exaggerated, or misleading (even if only because they are ambiguous and have no regulated or commonly accepted definition); or
  - 2.2. The values and business practices of a company more generally, eg where a company that derives the majority of its revenue from oil and gas rebrands itself and gives the impression that renewable energy accounts for a substantial portion of its operations.
3. Greenwashing forms part of a broader public emphasis on environmental, social, and governance (“ESG”) issues and considerations.
4. In the legal market, ‘greenwashing’ is not a term of art. It is also very much a developing area of law, and (certainly in the UK) there do not appear to be any reported cases in which a claim has been expressly advanced using the term. Nonetheless, there are a number of different sorts of legal actions that might be available where a company engages in greenwashing. This article highlights some of the sorts of claims that could be considered when advising clients, as well as some of the key issues to be addressed for each type.
5. It is convenient to begin by considering the issue from the perspective of the various sorts of people who might be affected by an act of greenwashing. Thereafter, some of the main regulators are discussed, as it may be beneficial to consider involving a regulator at least initially rather than proceeding directly to litigation.

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<sup>1</sup> Adapted from the Competition and Markets Authority’s explanation of ‘misleading environmental claims’, in its “CMA guidance on environmental claims on goods and services: Helping businesses comply with their consumer protection law obligations”, dated 20 September 2021, available at: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1018820/Guidance\\_for\\_businesses\\_on\\_making\\_environmental\\_claims.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018820/Guidance_for_businesses_on_making_environmental_claims.pdf).

<sup>2</sup> See the UK Government’s Green Claims Code website, available at <https://greenclaims.campaign.gov.uk/>.

## CATEGORIES OF CLAIMANT / COMPLAINANT

### Customers of the Company

6. The most obvious group of people who may be negatively affected by greenwashing are customers of the company, who discover that the product or service that they have purchased is not as environmentally friendly as it was made out to be. These might be:
  - 6.1. Consumer customers purchasing purportedly environmentally friendly products or services from the greenwashing company; or
  - 6.2. Business customers purchasing the greenwashing company's goods or services, eg choosing a logistics company on the basis that it is purportedly carbon-neutral.
7. In principle, the customer may have common law claims for misrepresentation, negligent or fraudulent misstatement, and/or breach of contract (including for terms implied by law, such as to quality or sales by description). The recent "Dieselgate" litigation against Volkswagen is an example of a class action successfully brought on these bases. Nonetheless, these sorts of claims may not always be the most efficient approach, as individual customers' losses may be low and/or difficult to prove.
8. Customers who are consumers may also be able to rely upon consumer protection legislation. Of particular importance is the Consumer Protection from Unfair Trading Regulations 2008 ("**CPUT**"):
  - 8.1. The CPUT prohibits, amongst others, "*misleading actions*" by traders (reg.5) which constitutes an offence (reg.9). This is enforceable by Trading Standards Services and the Competition and Markets Authority ("**CMA**") (reg.19).
  - 8.2. But in addition, since 1 October 2014, Part 4A of the CPUT provides for consumer redress for certain breaches of the regulations, including in relation to misleading actions. Redress may take the form of a right to unwind (reg.27E-H), a discount (reg.27I), and/or damages including for alarm, distress, physical inconvenience or discomfort (reg.27J).
9. Customers who are traders may be able to rely upon the Business Protection from Misleading Marketing Regulations 2008 (the "**BPRs**"). The BPRs prohibit advertising that misleads traders (reg.3), which constitutes an offence (reg.6). Unlike the CPUT, however, breach does not give rise to civil remedies by individual claimants, and enforcement is left to Trading Standards Services and the CMA (reg.13).
10. In addition, where the complaint is in the financial sector, it may be possible to make a complaint to the Financial Ombudsman Service ("**FOS**"). The main benefit of proceeding by way of a FOS complaint, apart from being cost-effective, is that the FOS has the power to award 'fair compensation' which includes not only compensation for financial loss, but also for pain and suffering, damage to reputation, and/or distress or inconvenience (DISP 3.7.2).
11. Customers may also make a complaint against the company to various other regulatory bodies, either general or sector-specific. These are discussed in more detail below.

### Persons with Non-Customer Relationships with the Company

12. A second obvious group of people who may be affected by greenwashing are people or businesses which are not customers but nevertheless have an association or relationship with the company, due to that company's purported environmental credentials. For example,

businesses which launch joint advertising campaigns or seek to be publicly associated with another purportedly 'green' company to promote their corporate reputation, or people or businesses which publicly support and associate themselves with an NGO or charity with 'green credentials'.

13. Similar to customers, depending on the facts, there may in principle be a claim for breach of contract, misrepresentation, and/or for negligent or fraudulent misstatement. Unjust enrichment will be difficult where there is a contractual relationship between the parties.
14. In these sorts of scenario, where one seeks damages, a likely difficulty will be proof of loss. Key to recovering substantial damages will be evidencing that actual loss was caused to the claimant by its association with the greenwasher, perhaps by way of loss of profit due to reputational damage. Alternatively, to avoid this difficulty, it may be advisable to try and bring claims which do not require proof of loss, eg misrepresentation.

### **Shareholders of the Company**

15. A less straightforward scenario concerns shareholders of the greenwashing company itself.
16. Leaving aside the possibility of activist shareholder actions, eg threatening to vote out directors, and proposing and adopting shareholder resolutions on ESG issues, it is quite difficult for shareholders to take legal action in relation to greenwashing under company law.
17. Directors owe their duties to 'the company' rather than individual shareholders (or to third party stakeholders). Ordinarily, therefore, enforcement action must be taken by the company itself, and individual shareholders are unable to enforce company law actions against directors. Further, even if a shareholder could proceed by way of a derivative action, company law gives a fair degree of leeway to directors to do their job as they deem fit, provided that they act in good faith and reasonably competently.
18. Nonetheless, investors may be able to rely upon the provisions of the Financial Services and Markets Act 2000, in particular:
  - 18.1. Section 90, which provides a right to compensation for negligently made untrue or misleading statements or certain omissions in a prospectus or listing particulars, where a person relies on that statement or omission and 'acquires' a security and thereby suffers loss.
  - 18.2. In principle, if the market value of an investment suffers because it is discovered that a firm has engaged in greenwashing in its prospectus, this sort of claim may be available. The main difficulty is likely to be loss and causation, ie proving that the loss in value was caused by the greenwashing in the prospectus, particularly if there has been a delay between the prospectus and the loss in value.
  - 18.3. Section 90A, which provides a right to compensation for false information fraudulently published on a 'recognised information service'. This is a service used for the dissemination of information required to be disclosed under the Transparency Rules contained in Chapters 4–6 of the Disclosure Guidance and Transparency Rules Sourcebook section of the FCA Handbook. These rules require the publication of, amongst others, annual reports and accounts.
  - 18.4. Subject to certain further requirements, the issuer is liable to compensate a person who acquires, continues to hold, or disposes of the securities in reliance on the published information, and suffers loss as a result of the untrue or misleading statement

or omission. The main difficulty with this sort of claim (other than proving fraud) is again that it is necessary to prove loss and causation, so that a mere discrepancy between published ESG credentials and the reality will not in and of itself be enough. The cases most likely to succeed will be where there is a crash in the share price as a result of a scandal or regulatory action.

19. Aside from these statutory remedies, in principle, common law actions may be available to individual shareholders. However, these are likely to face difficulties in practice. Many shareholders will not have purchased their shares directly from the company itself, and so a claim for misrepresentation will be unlikely to succeed. And even if a shareholder can prove that they would never have purchased shares but for the greenwashing (ie but for a negligent or fraudulent misstatement) there will once again be difficulties in relation to loss and causation.
20. Traditionally, in damages claims, if a claimant seeks substantial damages, they must prove some sort of personal injury or financial loss. But again, if the effect of greenwashing is to promote the financial success of a company (albeit dishonestly), it may well be difficult to show that a shareholder has suffered financial loss as a result of that greenwashing.
21. For example, a claimant might argue that had the misstatement not been made, they would never have bought the shares or they would have sold their shares. But in order to recover substantial damages, they would still need to prove a loss. This will usually involve proving that the claimant would have invested in a different investment, which was genuinely 'green', and would have been in a better financial position had they done so. This should not be too complicated where the greenwashing company's share price has crashed due to a scandal or regulatory action connected to the greenwashing. But this obviously does not apply if its share price remains high. The unfortunate reality is that for a company to be genuinely 'green' is often expensive, and it may well be less profitable than an environmentally irresponsible competitor. Trying to show that an alternative investment is not only ethically superior but also financially superior may not be possible.

### **Competitors**

22. It might also be possible to take action against a competitor for greenwashing claims under competition law where this leads to an unfair competitive advantage. By way of example (albeit a foreign one), in November 2021, one Italian company providing high-end fabrics to the automotive industry successfully obtained an injunction to restrain a competitor from engaging in a greenwashing advertisement campaign on the basis of competition law.<sup>3</sup>

### **Extended Value Chain Claims and Claims Against Parent Companies**

23. The above discussion assumes that one is seeking to claim against the company directly and/or solely. In fact, that may not always be necessary or desirable.
24. Although the limits and likelihood of success are far from clear, there is a developing area of law in which UK domiciled defendants are sued for alleged harm caused by their global value chains. So for example, in *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326, the Court of Appeal accepted as reasonably arguable (and therefore not vulnerable to strike out) that the widow of a Bangladeshi shipbreaker who had fallen to his death while working on a defunct oil tanker might have a claim against the defendant. The defendant was not the owner of the tanker, or the employer of the

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<sup>3</sup> See Forbes, "Alcantara Wins Major Court Battle Against Greenwashing", 8 December 2021, <https://www.forbes.com/sites/edgarsten/2021/12/08/alcantara-wins-major-court-battle-against-greenwashing/?sh=4e739f7a1cb3>.

deceased, or the company which was supervising the demolition. Rather, it was the company which had been hired by the owner to arrange the end of life sale of the tanker, and which (it was assumed for purposes of the application) knew that the company to which the tanker was sold would dispose of it in a dangerous manner, thereby creating a risk for the workers ultimately working on it.

25. Further, at least in some instances, it *may* be possible to sue a parent company in negligence for the acts of its subsidiaries: *Okpabi v Royal Dutch Shell Plc* [2021] UKSC 3.

### **Beneficiaries of Institutional Investments**

26. An interesting developing issue is whether beneficiaries of institutional investments (eg pension funds) can hold their trustees to account and demand that they take into account environmental considerations when investing funds on behalf of their beneficiaries, and/or exercising any voting rights they may have.
27. As a starting point, it must be noted that trustees have a duty to promote the purpose for which the trust is created. Where the trust is set up to provide financial benefits for its beneficiaries (as is the case with a pension fund), promoting the success of the trust involves promoting its financial success. A trustee should therefore not generally take into account their own personal ethical views when deciding the best way in which to invest, if that would have the consequence of harming the interest of the beneficiaries.
28. However, the core idea in this developing area is that it is proper to take environmental considerations into account because they do not only give rise to ethical questions. Climate change and other environmental degradation have significant financial consequences as well.
29. In Australia, the beneficiary of a superannuation fund (a type of pension fund) alleged, amongst others, a breach of trust by the trustees of the trust for their failure to disclose the fund's approach to climate change, and their failure to ensure that proper steps were being taken to manage the risks of climate change and other ESG risks. The superannuation fund ultimately settled and issued a public statement that it would in future, amongst others, increase its disclosure of matters material to ESG issues, and also ensure that the investment managers it engaged would take active steps to manage the financial risks imposed by climate change.<sup>4</sup>
30. Further, arguably, if a pension fund is intended to financially benefit its members, its investment decisions must balance the financial benefit of the investment with any negative financial consequences that come with investing in that company. This applies not just to mere holding of investments, but also in exercising voting rights of shares in the company.
31. Where the investment is intended to be held over the long term with beneficiaries only becoming eligible to draw down on the fund in, say 20 years, then there is an argument that investment decisions which risk harming their financial welfare over that same time period might constitute a breach of trust. This might apply to investing in environmentally degrading companies, or failing to apply pressure as a significant shareholder on companies to adequately disclose their environmental strategies and impacts, or improve their sustainability initiatives, or hold them accountable to their environmental commitments. This is of particular importance because institutional investors frequently have significant shareholdings in large companies, and their

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<sup>4</sup> Hall & Wilcox, "Super fund Rest settles 'groundbreaking' lawsuit over climate change risk", 25 November 2020, available at: <https://hallandwilcox.com.au/thinking/super-fund-rest-settles-groundbreaking-lawsuit-over-climate-change-risk/>.

involvement may well make the difference between a successful activist shareholder resolution and an unsuccessful one.

## CAUSATION AND LOSS

32. A major issue with greenwashing claims relates to loss. In the case of an investor, although dirty investments may produce a higher financial return than green investments, the real rate of return must take into account the environmental pollution caused by the dirty investors (so damages could include the cost of, e.g., the installation of air conditioning because of the global warming caused by dirty investments). More imaginatively, damages could include the cost of offsetting the additional carbon released into the atmosphere by the dirty investments.
33. However, there is a tragedy of the commons issue when losses are restricted to those suffered by individual claimants. Because the damage caused to the climate always far exceeds the losses suffered by individual claimants, and adversely affects (and often disproportionately affects) those who may lack the standing or the means to sue, if greenwashing claims only compensate individual claimants for their particular losses, companies will still have incentives to greenwash.
34. From a law and economics perspective, there are at least four ways the law could develop to make sure that greenwashing does not pay.
  - 34.1. The first, which would require the least change in the common law, is that individual claimants are awarded exemplary damages in cases where greenwashing has been deliberate: *Kuddus v Chief Constable of Leicestershire* [2002] 2 AC 122.
  - 34.2. The second is that in greenwashing cases, in addition to the damages awarded to the individual claimant, the court orders the polluter to make restitution to the environment, possibly as an equitable remedy or as a novel species of mandatory injunction.
  - 34.3. The third is that the environment, or environmental groups, are given standing to seek damages on behalf of the environment as a whole, with the damages to be invested in carbon offsetting or other sustainability solutions. In New Zealand, the Whanganui River and the Te Urewera Park and other natural features have been recognised as legal persons by statute: Te Urewera Act 2014 and the Te Awa Tupua Act 2017. In 2019, the Bangladeshi Supreme Court recognised all its rivers as having legal personality: *In Writ Petition No. 13989*. In the face of a climate crisis caused principally by artificial legal persons (companies), why should the features of the natural environment not be similarly personified in order to capture the collective damage imaginary legal persons cause?
  - 34.4. The fourth, discussed below, is through effective action by regulators.

## REGULATORS AND REGULATORY ACTION

35. Apart from individual claimants and complainants making claims, there are a number of regulators who potentially have the power and/or duty to take action in relation to greenwashing. A number of relevant authorities are mentioned below.

### The Competition and Markets Authority

36. The CMA is the UK's primary competition and consumer regulator.
37. The CMA has recently made it clear that it is taking increased notice of concerns of greenwashing:

- 37.1. In September 2021, the CMA published guidance applicable to businesses making claims about the environmental credentials of their products, services, processes, brands, etc.<sup>5</sup>
- 37.2. At the same time, the CMA also released a Green Claims Code to assist businesses in determining whether their green claims were legitimate or not.<sup>6</sup>
- 37.3. The CMA is also currently investigating greenwashing in the fashion industry, and has indicated that it intends to ‘name and shame’ the worst offenders.<sup>7</sup>
38. The CMA has extensive powers in relation to anti-competitive behaviour. And so, where greenwashing amounts to anti-competitive behaviour, this is a matter which the CMA might be well placed to deal with.
39. The CMA has less extensive powers in relation to consumer protection (although it seems that the Government is currently planning to expand its consumer protection powers<sup>8</sup>). At present, however, and leaving these proposals aside, the CMA may take a number of enforcement actions:
- 39.1. Pursuant to s.213 of the Enterprise Act 2002, the CMA is designated as a ‘general enforcer’. On that basis, the CMA may apply for an ‘enforcement order’ against persons who breach a wide range of specified UK laws which harm the collective interest of consumers. The consequence of an enforcement order is a court order requiring the offending conduct be ceased and, in some instances, order ‘enhanced consumer measures’ as defined in s.219A, including by way of redress to affected consumers.
- 39.2. The CRA has specific enforcement powers under particular consumer legislation, including the CPUT (reg.19(1A)).
- 39.3. The CMA may also, along with regulators, institute criminal prosecutions in particularly severe cases.

### **The Advertising Standards Authority**

40. The Advertising Standards Authority (“**ASA**”) is the industry self-regulatory body which regulates advertising in the UK and enforces the advertising standards code. The ASA investigates complaints and may sanction an advertiser where, amongst others, it finds that an advertisement is misleading. Where the ASA upholds a complaint, it is likely to require the advertisement to be removed and future advertisements correct the problem. Where an advertiser refuses to comply

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<sup>5</sup> Competition and Markets Authority, “CMA guidance on environmental claims on goods and services: Helping businesses comply with their consumer protection law obligations”, 20 September 2021, available at:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1018820/Guidance\\_for\\_businesses\\_on\\_making\\_environmental\\_claims\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1018820/Guidance_for_businesses_on_making_environmental_claims_.pdf).

<sup>6</sup> Available at <https://greenclaims.campaign.gov.uk/>.

<sup>7</sup> The Guardian, “This article is more than 2 months old Greenwashing UK fashion firms to be named and shamed by watchdog”, 11 March 2022, available at:

<https://www.theguardian.com/fashion/2022/mar/11/greenwashing-uk-fashion-firms-to-be-named-and-shamed-by-watchdog>.

<sup>8</sup> Department for Business, Energy & Industrial Strategy, “Consultation outcome: Reforming competition and consumer policy: government response”, 20 April 2022, available at:

<https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy/outcome/reforming-competition-and-consumer-policy-government-response>.

with an ASA decision, the ASA may refer it to Trading Standards, and may also require UK broadcasters to exclude the advertisement from its broadcast service.

41. As an example, in April 2022, the ASA upheld a complaint against electric scooter hire company Tier, in relation to its ad campaign that its scooters were environmentally friendly. The ASA considered that the campaign implied that the scooters were environmentally friendly in an absolute sense rather than a comparative sense (ie they caused no environmental damage over their entire life-cycle and were inherently good for the environment, rather than just less bad than other forms of motorised transport), and Tier could not demonstrate that that was the case. The ASA ruled that that advertisement must cease to appear in its misleading form, and future advertising campaigns must be clearer.<sup>9</sup>
42. The ASA has made similar findings against, amongst others, oat drink company Oatly.<sup>10</sup>
43. Where an ASA ruling is not complied with, the ASA may refer the noncompliance to Trading Standards or Ofcom. In addition, UK broadcasters licenced by Ofcom are required to follow ASA rulings as part of their licence conditions.

### **The Financial Conduct Authority**

44. The Financial Conduct Authority (the “**FCA**”) is the conduct regulator for financial firms in the UK, with the strategic objective of ensuring that financial markets function well.
45. To the extent that greenwashing, or a failure to take adequate action in relation to environmental issues, undermines this, the FCA can potentially intervene.
46. The FCA has a number of different enforcement options available to it, including investigatory powers, public censures, financial penalties, and/or revocation of an authorised firm’s or person’s authorisation to carry on regulated activities.
47. Further, pursuant to s.213(2) of the Enterprise Act 2002, the FCA has been declared a ‘designated enforcer’. On that basis, like the CMA, the FCA may apply for an ‘enforcement order’ against persons who breach a wide range of specified UK laws which harm the collective interest of consumers.
48. The FCA has already intervened in the market in relation to environmental issues more generally. Most recently, as from accounting periods beginning on or after 1 January 2022, issuers of standard listed shares will fall under disclosure requirements in relation to climate-related risks and opportunities, based on the work of the Task Force on Climate-Related Financial Disclosures (TCFD). This follows on a narrower requirement for only premium listed companies to do the same, which was introduced from 1 January 2021.<sup>11</sup> Of interest, two companies (shipping company Carnival and food delivery service Just Eat) have already had complaints laid against

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<sup>9</sup> ASA, “ASA Ruling on TIER Operations Ltd”, 6 April 2022, available at:

<https://www.asa.org.uk/rulings/tier-operations-ltd-a21-1118832-tier-operations-ltd.html>.

<sup>10</sup> ASA, “ASA Ruling on Oatly UK Ltd t/a Oatly”, 26 January 2022, available at:

<https://www.asa.org.uk/rulings/oatly-uk-ltd-g21-1096286-oatly-uk-ltd.html>.

<sup>11</sup> FCA, “PS21/23: Enhancing climate-related disclosures by standard listed companies”, 17 December 2021, <https://www.fca.org.uk/publications/policy-statements/ps-21-23-enhancing-climate-related-disclosures-standard-listed-companies>.



them for failing to comply with those requirements, though it is at present unclear whether the FCA will uphold the complaint.<sup>12</sup>

49. It is to be hoped that these sorts of disclosure requirements will encourage greater transparency on environmental issues and begin to standardise disclosure. However, these will not be enough if firms do not take these reporting obligations seriously, or engage in greenwashing while purporting to comply with the disclosure obligations. It appears that the FCA is aware of this, and has released a discussion paper in November 2021, entitled “Sustainability Disclosure Requirements (SDR) and investment labels” (DP21/4)<sup>13</sup> dealing with these sorts of issues. It is, however, lagging behind the EU which adopted the Regulation on the Establishment of a Framework to Facilitate Sustainable Investment (the Taxonomy Regulation) in June 2020. The Taxonomy Regulation is intended to harmonise the meaning of ‘environmentally sustainable’ in relation to economic activities, and in particular investments, with part of the regulation coming into force on 1 January 2022 and the remainder on 1 January 2023.<sup>14</sup> This is then an area to watch with interest.

### Trading Standards Services

50. “Trading Standards Services” refers to the trading standards offices of local authorities around the country. Trading Standards Services enforce a wide range of legislation relating to the supply and distribution of goods and services, including, as set out above, the CPUT, the BPRs, and have complaints referred to them by the ASA. Trading Standards Services also enforce the Consumer Rights Act 2015, including by way of making test purchases and undertaking testing.

### Sector Specific Regulators

51. Where greenwashing occurs within a particular industry, there may be specialist industry regulators who may hear complaints and/or take enforcement action. This should in all instances be checked.
52. For example, as discussed above, the FOS is a useful ombudsman service where the complaint is made by a customer of a financial services business.

### The UK National Contact Point under the OECD Guidelines for Multinational Enterprises

53. It is, in principle, possible to lay a complaint to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises (“UK NCP”), which seeks to promote compliance with the OECD Guidelines for Multinational Enterprises.<sup>15</sup> These Guidelines are not legally binding on companies, but an international company may still suffer serious reputational damage should it formally be found to have breached these guidelines, which are intended to set out responsible business practices across a wide range of areas, including human rights, environment, and consumer interests.

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<sup>12</sup> Reuters, “UK regulator asked to sanction Carnival, Just Eat over climate disclosures”, 18 August 2021, available at: <https://www.reuters.com/business/environment/uk-regulator-asked-sanction-carnival-just-eat-over-climate-disclosures-2021-08-18/>.

<sup>13</sup> Available at: <https://www.fca.org.uk/publication/discussion/dp21-4.pdf>.

<sup>14</sup> See eg Simmons and Simmons, “The Taxonomy Regulation”, undated, available at: <https://www.simmons-simmons.com/en/features/sustainable-financing-and-esg-investment/ck0z707dt4knd0b69o514mjkl/the-taxonomy-regulation>.

<sup>15</sup>The UK government’s explanation of the complaint process can be found at: <https://www.gov.uk/guidance/uk-ncp-complaint-handling-process>.

54. In December 2019, ClientEarth, a registered environmental law charity, laid a complaint against BP plc in connection with an advertising campaign entitled it had launched earlier that year on various media including billboards in the UK, Germany, and the USA, in connection with BP’s low-carbon energy activities. ClientEarth alleged that this advertising campaign misrepresented the scale of those activities, and misled the public, insofar as it suggested that these constituted a substantial portion of BP’s activities when in fact oil and gas made up around 96% of its annual investment expenditure at the time.
55. Shortly after the complaint was laid, BP publicly announced that it would “*stop corporate reputation advertising campaigns*”, including the advertising campaign complained about, and “*re-direct resources to promote well-designed climate policies*”. Because of this, the UK NCP declined to further consider the complaint, but it did note that the issue raised by the complaint was “*material and substantiated*”.<sup>16</sup>

## CONCLUSIONS

56. At present, there are therefore a number of existing routes through which greenwashing can be combated. However, at least for now, the main role appears to be played by government agencies and regulators, and although claims and remedies are available to individuals they are far from straightforward to bring and prove.
57. Any person seeking to bring a claim for greenwashing is strongly advised to take specialist legal advice to maximise their chances of navigating this difficult area.

[David McIlroy](#)

[1995 call](#)



[Ian Shipley](#)

[2019 call](#)



<sup>16</sup> The UK NCP’s decision is available at: <https://www.gov.uk/government/publications/client-earth-complaint-to-the-uk-ncp-about-bp/initial-assessment-clientearth-complaint-to-the-uk-ncp-about-bp>.