SQUIRE PATTON BOGGS

ESG Disclosures and Securities Litigation Risk

What UK Boards and Those in the Financial Sector Should Be Doing Now

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Executive Summary

UK-listed companies and financial sector participants are likely entering a new phase of securities litigation exposure. Three developments are converging:

- Environmental, social and governance (ESG) disclosures are becoming structured, evidence-based datasets rather than narrative positioning.
- UK sustainability disclosure architecture is tightening through overlapping regimes: Financial Conduct Authority (FCA) anti-greenwashing and Sustainability Disclosure Requirements (SDR) (within their perimeter), listed-company disclosure reform, and UK Sustainability Reporting Standards (UK SRS S1 and S2), now published for voluntary use.
- Litigation under sections 90 and 90A of the Financial Services and Markets Act 2000 (FSMA) (and since 19 January 2026 regulation 30 of the Public Offers and Admissions to Trading Regulations 2024 (POATR)) is evolving, particularly around investor reliance, case management and collective action mechanics.

Together, these trends increase the risk that ESG disclosures, especially forward-looking sustainability and transition statements, become a significant source of UK securities claims. The strategic question for boards and in-house counsel is how disclosure governance must adapt.

1. ESG Disclosures Are No Longer Narrative; They Are Evidence

Regulatory and market practice increasingly require ESG information to be:

- Structured
- Comparable
- Useful for decision-making
- Capable of external challenge

Climate pathways, emissions metrics, transition plans and sustainable product descriptions are now expected to be supported by documented assumptions, methodologies, controls and governance. ESG disclosures are accordingly no longer just messaging. They increasingly form part of the evidential record against which a company or financial institution may later be judged.

The core question for any future litigation is often simple: what evidence existed for this statement when it was published?

2. Why ESG May Become the Next Battleground

The likely trigger for future claims is not merely a change in legal framework. It is the growing importance of sustainability information to investor decision-making, valuation narratives and public market positioning.

That creates a more attractive landscape for claimant firms and litigation funders for several reasons.

First, sustainability and transition statements are increasingly repeated across formal and informal channels, including annual reports, prospectus-type documents, investor presentations, websites and product disclosures.

Second, many such statements are inherently vulnerable to hindsight challenge because they involve forecasts, assumptions, third-party data or evolving methodologies.

Third, claimant firms and litigation funders have already shown willingness to pursue large UK securities claims where the economics support group proceedings and external funding. As the market becomes increasingly familiar with these types of claims, ESG and transition statements may become a natural next area of focus where those statements are said to have mattered to investor decision-making.

The point is not that every climate or ESG statement will generate a claim. It is that the combination of more data, greater comparability, more public repetition and stronger investor focus makes this an area where litigation risk is likely to grow.

3. Why FSMA and POATR Are the Natural Legal Framework for ESG Claims

The legal regimes matter because they provide the routes through which sustainability-related disclosure disputes may crystallise.

POATR Regulation 30 and Legacy s.90 FSMA – Capital-raising Risk

Where ESG and transition narratives appear in offering or admission documents, they may now give rise to claims via different statutory routes depending on timing and document type.

For new in-scope prospectus-type documents from 19 January 2026, the relevant compensation provision is regulation 30 POATR. For older prospectuses and listing particulars under the legacy regime, s.90 FSMA remains relevant.

In practical terms, the risk areas are familiar:

- Untrue or misleading statements
- Material omissions
- Sustainability credentials used to support capital raising
- Transition or green financing narratives
- Use-of-proceeds language tied to ESG outcomes

One important feature of the new POATR regime is the availability and treatment of protected forward-looking statements. Where the statutory conditions are met, a more issuer-friendly liability standard applies. However, this does not remove risk; it makes classification, assumptions, warnings and evidential support even more important.

s.90A FSMA – Potentially the Main ESG Battleground

For annual reports, results announcements and other published information falling within the statutory framework, s.90A and Schedule 10A of FSMA remain the main route for claims in the secondary-market context.

This is likely to be especially important for ESG and transition disclosures because that information is increasingly presented as relevant to corporate strategy, resilience, growth and long-term value.

That said, investors' reliance on published information remains a central hurdle for many s.90A claims, and this area of the law continues to develop. Accordingly, this does not reduce the practical risk for issuers, as unsettled law can itself increase exposure by encouraging ambitious claimant arguments, lengthy procedural disputes and costly evidential exercises.

4. Reliance and Collective Actions – Why Risk Is Increasing

The bottom line here is the law is far from settled. Recent cases show that courts are:

- Testing the limits of reliance theories under s.90A
- Willing to envisage a basis may exist for scrutinising broad price/market reliance arguments
- Allowing substantial FSMA issues to proceed where doctrine is still maturing
- Focusing closely on procedural design and manageability in group claims

For boards, the practical implication is clear: uncertainty itself increases exposure. Claimant strategy, funding appetite and procedural sophistication are all moving faster than many issuer control frameworks.

5. Why ESG Creates Distinct Litigation Dynamics

ESG and transition statements are particularly sensitive because they often combine present fact, methodological judgment and future ambition in the same disclosure.

Forward-looking Content

Net-zero targets, transition pathways and scenario modelling are inherently predictive and vulnerable to hindsight challenge.

Methodological Judgment

Metrics such as financed emissions and product sustainability characteristics often depend on assumptions, proxy data and evolving standards. Disputes may focus less on numerical error and more on whether methods were reasonable, consistently applied and clearly disclosed.

Cross-functional Ownership

Legal, finance, sustainability, risk, compliance and investor relations teams all shape ESG disclosures. Without clear ownership, governance fragmentation can create evidential gaps.

Volume of Disclosure

More touchpoints mean more litigation risk. Annual reports, transaction documents, investor materials, product disclosures and public statements can drift unless managed under one control framework.

6. Why This Matters for the Financial Sector

Financial institutions are not just one more sector exposed to this trend. They often sit at several points of risk at once.

They may be:

- Making their own sustainability and transition statements
- Promoting sustainability-related products or services
- Participating in offerings, admissions, financings or other transactions where ESG forms part of the equity story or credit case
- Assessing whether clients' disclosure controls are robust enough to support those statements

For banks and other financial institutions, this is therefore both a direct disclosure issue and a client diligence issue. Business teams will need to be fully across the practical steps companies are being advised to take, because those are increasingly the same points financial institutions will want to test in clients and counterparties.

7. Practical Risk Management – What Good Looks Like

The right response is not to stop making ESG or transition statements – it is to ensure that the process behind them is capable of standing up to later scrutiny.

1. Create a Single ESG Disclosure Governance Framework

Apply one verification standard across key channels:

- Annual reports
- Prospectuses and other transaction disclosures
- Investor decks and market announcements
- Marketing and core public-facing materials

The goal is to avoid disclosure drift.

2. Implement a Forward-looking Statements Protocol

Before publication:

- Distinguish clearly between ambition and evidence-backed present fact
- Identify and document assumptions and scenario choices
- Record internal challenge and dissent
- Ensure structured sign-off and accountability
- Consider whether any warning language is appropriately tailored

Courts often place significant weight on contemporaneous reasoning.

3. Build an Audit Trail Before You Need One

Maintain evidence of:

- Data sources and controls
- Methodologies and change logs
- Verification steps and challenge processes
- Committee and board approvals
- External assurance or expert input, if any

A strong audit trail is one of the best defences.

4. Map Statements/Disclosures Against Current and Incoming UK Standards

Conduct periodic gap analysis against:

- FCA anti-greenwashing expectations
- SDR obligations where applicable to the firm/product perimeter
- FCA listed-company sustainability disclosure reforms (as finalised)
- UK SRS adoption pathway and interoperability requirements

5. Treat ESG as Litigation Risk – Not Just Compliance

Boards and disclosure committees should consider:

- Legal escalation triggers
- Correction or clarification mechanisms if assumptions change materially
- D&O and corporate insurance alignment
- Document retention and litigation-readiness protocols
- Whether the organisation has identified which sustainability statements are most likely to matter to investors or counterparties

8. Conclusion – The Strategic Question for Boards

- The UK is not yet a US-style securities class action market. But the conditions for more frequent and more sophisticated claims are increasingly present, and ESG disclosures are an obvious candidate for future focus: more standardised data, more developed claimant strategy, active funding markets and growing investor emphasis on sustainability information.
- Accordingly, the organisations best protected will be those treating ESG disclosures with the same evidential discipline as financial reporting.
- Similarly, the core question is no longer whether companies should make ambitious ESG statements. It is whether they can demonstrate, at the time of publication:
- What they knew
- What they assumed
- Why the statement was reasonable in context
- How governance, challenge and sign-off were applied

Those that can evidence this clearly will be better positioned as ESG regulation, supervision and litigation continue to mature.

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