



The Work Couch

NAVIGATING TODAY'S TRICKY PEOPLE CHALLENGES TO
CREATE TOMORROW'S SUSTAINABLE WORKPLACES

Season 2

Episode 4 – Social washing: Avoiding the pitfalls, with Kelly Thomson

Ellie: Hi and welcome to the Work Couch podcast, your fortnightly deep dive into all things employment. Brought to you by the award-winning employment team at law firm RPC, we discuss the whole spectrum of employment law with the emphasis firmly on people. My name is Ellie Gelder. I'm a senior editor in the employment engagement and equality team here at RPC and I'll be your host as we explore the constantly evolving and consistently challenging world of employment law and all the curveballs that it brings to businesses today. We hope by the end of the podcast, you'll feel better prepared to respond to these people challenges in a practical, commercial, and inclusive way. And to make sure you don't miss any of our fortnightly episodes, please do hit the like and follow button and share with a colleague.

Today we're exploring the issue of social washing, starting with what does that term actually mean? What are the commercial implications of social washing? And how can businesses avoid the pitfalls? And with me to navigate this growing area of importance is partner in RPC's Employment Engagement and Equality team, Kelly Thompson. And conveniently for this episode, Kelly is also RPC's ESG lead, and she frequently advises clients on their various ESG requirements. Hi Kelly, thanks so much for joining me on the Work Couch today.

Kelly: Hi Ellie, it's lovely to be here again.

Ellie: So, as I mentioned, Kelly, you are RPC's ESG lead. So, you are the perfect person to talk to us about the S in ESG. So that's a business's social impact. And since the pandemic, we've really seen the importance of the S in ESG really come to the fore.

Kelly: Yeah, the pandemic definitely shone a kind of light on lots of the topics that underlie the S in ESG. Before we get into what the S actually is, I think one thing to say upfront is that I'm always conscious how we can get really bogged down in the definition of ESG and each of its component elements and we love definitions as lawyers, don't we? But I'm always mindful that can become a bit of a barrier to people getting involved and progressing. And also, the other thing to have in mind is that there aren't any bright lines between the E, the S and the G and there's an awful lot of overlap. In fact, we just ran an event in partnership with the United Nations Foundation which was focused on the role of the private sector in advancing gender equality. So, gender equality is firmly a goal in the S but it's also very relevant to G, governance, especially in countries and sectors that have got regulatory requirements around gender diversity. And as well, I think it's really interesting that gender equality is also widely recognised as a catalyst for solving lots of the other challenges that face people and planet, including in relation to the E, the environment. So, I think kind of keeping in mind that sort of overlap and the potential opportunities it creates is really important. But having said that, let's hone in on the S, which stands for social, as you said, Ellie. And I kind of think of this as about really the relationships that an organisation has with different groups of people and the responsibilities that the organisation has to those different groups of people. And like every kind of ESG consideration really, an organisation's approach to and its kind of impact in that S sphere is borne out by policies and also by strategic decisions and day-to-day practices and that's something we talk a lot about on the Work Couch and it is the sort of power of the day-to-day practice and intervention.

Just really quickly, it might help to think about the different groups of people that the S is driving at. And I think the most obvious, perhaps, for many organisations is the organisation's own people, so its workforce. So that's going to encompass things like pay equity, fair treatment, eradicating discrimination, diversity, equity, inclusion and belonging principles, and the role that you play as an employer in the wider health, well-being development of your people.

But it's also kind of that wider net of people in an organisation's broader ecosystem. That's where we shade into the G actually, when we think about things like eradicating modern slavery and human rights abuses in an organisation's supply chain. So, casting that people net a bit wider than the ones that you directly contract with. And then the other kind of group of people that often comes up in the kind of S context, and particularly,

	<p>but not exclusively, but particularly for consumer facing brands and organisations is sort of the impact you have as a business on the people in the communities in which you operate. That's really key to sort of an S and an ESG footprint, both in terms of minimising the negative impacts, but also looking for those opportunities to contribute positively to moving the dial, whether it's by the products that you create, the services that you provide, the stand you take on social issues and concerns. You can see there's lots of different groups of people to be considered when thinking about that impact under the S-Tent.</p>
Ellie:	<p>That's a really useful explanation of how far reaching the S is. So, what are the commercial drivers? Because we always like to look at the commercial angle on the Work Couch. So, what are those drivers for businesses to engage with the pressing social concerns of the day?</p>
Kelly:	<p>Yeah, and I think it is important to engage with the commercial drivers because so often we talk about the moral drivers which are really important and are often the key driver for businesses and individuals actually in making change here. But unless we engage with the commercial drivers, there are some people who may not come along on that journey who may not agree that it's the place of the business to be thinking about the kind of moral driver and all of that side of things, but may be persuaded by the commercial piece or may have may want to contribute to it through a commercial lens and that all of those different lenses are really important. And from that commercial point of view, there's like a multi-pronged set of commercial drivers really and the interesting and challenging thing is that they're sometimes in conflict. So just to sort of throw some at the wall, we've got, you know, shareholder activism and pressure. And there's been various reports of that sort of driver recent months often actually against organisations addressing social concerns, so backlash against ESG initiatives, although not exclusively. There's the demands of employees and future talent and there's lots of really compelling research that younger generations in particular are increasingly making employment decisions that take into account whether their values align with those of the organisation. But I will also say a bit of a caveat there, don't assume anything because there's also research that suggests that older generations of employees are perhaps more committed to certain environmental causes, for example. So, it's not always an obvious, what might seem like an obvious equation. There's drivers around regulatory and legal obligations, lots of examples of that, you know, around pay transparency, increasing regulatory pressure and scrutiny across lots of different sectors focused on non-financial measures and kind of cultural behaviours. There's consumer pressure, which I sort of mentioned just briefly just now, but you know, in a social media world, it's never been easier for your customers and consumers to vote with their voice as well as their feet and their purse. Conversely, putting a more positive slant on it, there's that business driver that if you can engage authentically and in the right way with social concerns, that can be a driver of brand value and even revenue.</p> <p>And then, you know, they're sort of stepping back from it. Companies are citizens, right? They don't operate outside the ebb and flow of social mores and social movements. So, there's an increasing awareness in lots of organisations that staying silent on pressing issues of the day isn't necessarily a neutral act. So, you can't always stay out of the discussion, if I can put it that way. And I mentioned before the United Nations Sustainable Development Goals. They're essentially a call to action for all of us, including for-profit organisations to look at the part that they can play to move in the dial towards a more sustainable planet for all of us. And so, lots of organisations, certainly lots that I know have aligned behind those goals or similar initiatives. And so, the business driver for them is in part about turning those pledges into real life action and tangible change.</p>
Ellie:	<p>And many of us are familiar with the term greenwashing. So that's when a business makes a claim about its eco-friendly efforts, but it doesn't actually back those up. So, tell us what social washing means, which is a relatively new term in the ESG space.</p>
Kelly:	<p>Yeah, I think it's a concept that sort of took off in terms of vernacular in the last few years, but I haven't heard it that much until probably the last six months to a year. Essentially, social washing is kind of the practice of trading off perceived or advertised social credentials that aren't actually reflected in the way the business operates. So, you put a black square on your social media or hashtag BLM after the murder of George Floyd, but you have no people of colour in your leadership roles, you might be accused of social washing, or you sell rainbow flag adorned pride merchandise, but you have a bullying problem in relation to your trans employees, you might be accused of social washing. And it's like green washing, which you mentioned, Ellie, it's about essentially profiting from what you say or what you project without backing it up with what you do when no one's watching or when no one's buying.</p>
Ellie:	<p>So, it's sort of a disconnect between what a company is putting out externally and how it actually approaches that issue in practice.</p>
Kelly:	<p>Yeah, exactly. And there's an article in Harvard Business Review that kind of captures a really good lived example of the sort of disconnect we're talking about. And it talks about an employee who had an increase in her responsibilities. She thought that extra work merited recognition. She applied for a promotion, but she was told that the person who needed to approve her promotion didn't have time to consider it. They were too busy working on the company's response to racial injustice, police brutality. And she as a black woman felt,</p>

	<p>hang on a minute, there's some hypocrisy here, I'm asking for my work to be recognised. And the quote from this individual, I think encapsulates it. She said, "I found it ironic that senior leadership prioritised their public image when internally they dismissed or ignored the very black voices that they claim to care about. It made the gesture of solidarity feel like a slap in the face." So that's what as a business, you don't want to be in that place for all the obvious reasons.</p>
Ellie:	<p>Yeah, that really brings it home. So, what are the potential implications then for a business where it is apparently engaged in social washing?</p>
Kelly:	<p>Yeah, so there's that adverse impact, like with that individual example we just talked about from the Harvard Business Review article. The impact on how your people, your customers, your investors, how those different stakeholders perceive your brand, and that can be really massive, actually. So, failing to appreciate that risk is sort of danger zone. I don't know, Ellie, if you saw the gender pay gap bot in 2023? Yeah, which kind of beautifully illustrates it. And it was, it was this bot that was set up with a really simple mission that said, if you tweet about hashtag international women's day 2023, I'll retweet your gender pay gap. In other words, if you tell me yours, I'm going to show you yours and you might not like it. So, and I just thought, yeah, you know, it was very much illustrating this point of like, if you are going to seek to benefit from a statement about how much you care or how much you do in a space, then you need to have understood that you've got data that backs it up and looked at that.</p> <p>Kantar published some research the back end of last year that said on average across sectors, 52% of people globally said that they'd seen or heard false or misleading information about sustainable action taken by brands. So, there's a worrying sort of trust issue there around social washing and green washing. And you kind of see the immediate potential adverse impact on reputation. And we all know that reputation feeds into profit, business longevity, market share. RepRisk did another piece of research, we love research on the Work Couch, and they're an ESG data science organisation and they found a really interesting connection between green washing and social washing, that 55% of green washing risk incidents globally also have a social component and they said that the same research looked at what was the most common social washing kind of issue and in both the UK and the US it was human rights abuses and corporate complicity.</p> <p>Diversity was also a key issue. So, 18% of social washing issues in the US, 11% in the UK were linked either to social discrimination or discrimination in employment. So that really clear internal/external connection or frankly, internal/external disconnect.</p>
Ellie:	<p>And could a company's claims about its social credentials also prompt scrutiny from regulators in the same way we've seen that's happened with greenwashing?</p>
Kelly:	<p>Yeah, and I think we'll increasingly see that and actually in some quite new and novel ways. There was a really interesting case I heard about recently in the USA involving the SEC, that one of their regulators, essentially this company had disclosed in its regular kind of reporting risk factors related to its workforce. There's nothing unusual there. You know, many businesses that are reliant on their talent know that, you know, retaining much of it in that talent is a key part of being a being a kind of sustainable and successful business. And essentially this company had recognised in their reports that much of their success, as I said, depended on their ability to attract, retain, motivate, those qualified and skilled people. And so conversely, they recognised that if they were unable to do that, it might negatively impact their future performance. So kind of, okay, nothing controversial or unusual in that, but where they came unstuck that I thought was really interesting was, according to the regulator, the SEC, the company didn't have the necessary controls and procedures in place to collect and analyse employee complaints of workplace misconduct and that the company's disclosure committee, when they were coming to put out their public reports for the market around their performance, they didn't analyse those complaints for disclosure purposes. So essentially there's kind of that disconnect. So just to be clear, as I understand it, I don't think there was any suggestion that there was any kind of systemic underlying issue within the workforce. The issue was recognising and disclosing the potential market risk of workforce issues arising, but not also ensuring that systems were in place to assess workplace issues and disclose those appropriately. So again, that disconnect, we're saying to the market X is important, but we don't have the system to ensure that we are ensuring X happens. How much do you reckon that company settled that claim for with the SEC, Ellie?</p>
Ellie:	<p>Well, I'm thinking it's probably not a small sum given we're talking about the financial sector. Is it as much as the million mark or?</p>
Kelly:	<p>\$35 million.</p>
Ellie:	<p>Wow.</p>
Kelly:	<p>And the US is very, it's a very particular kind of market. That's, that's a specific regulator, but I just thought it was really interesting as, and I haven't seen it reported as a necessarily, as an example of, you know, of social washing, but you know, it kind of is right. It's a sort of a regulator looking at the disconnect between what the company has recognised as a key part of their, you know, mode of operating.</p>

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- Kelly:** and then what they've put in place to ensure, and I just thought that was fascinating.
- Ellie:** I think that's a really interesting illustration of how it can play out. And that's a massive settlement figure. So, yeah, really interesting example of just that increased regulatory scrutiny that we've talked about in businesses approach to that non-financial misconduct. And just as you say, it feeds into how an organisation is looking after its workforce. So, clearly some pretty serious consequences and risks of an organisation engaging with a social issue. And I think some people might be listening and they might be forgiven for thinking, well, I'm damned if I do and I'm damned if I don't when I engage with a social issue. What do you say to that?
- Kelly:** Yeah, I can totally understand that perspective. And I do think, let's be honest, there is a potential innate tension in this. There's no point in us pretending otherwise, because I think if we pretend otherwise, we're sort of giving the message that, well, this is all really easy. And if you don't think it's easy, it's something wrong with you. It's not, there is an innate tension. If you're a business or a brand, you often want, you often need actually to proactively engage on certain pressing social concerns of the day. And there's loads of good and ethical drivers at play. You know, for example, you ask your employees to bring their whole selves to work. How can you do that if you're saying to them, oh, by the way, the issues that are affecting you outside of work, they cannot infiltrate the workplace. By the way, bring your whole selves to work, but not those challenging issues. It just doesn't connect. Many businesses know they've got a diverse customer base. They know they've got to create products and services that speak to that diversity, or they're not catering to the needs of their customers, they're responsible corporate citizens, they know they have a role to play in the communities in which they operate. So, all of these things add up to this perspective for lots of businesses that oftentimes they feel they can't stay silent on a social issue. It's not a viable option because I know I'm not gonna meet the demands of my different stakeholders. And that creates similar risks as social washing does, profit, market share, reputation, business longevity. So, there is a tightrope to be walked and I do empathise with that tension. It's not always an easy equation to solve, to be honest.
- Ellie:** So how can businesses try and resolve that innate tension that you've just described?
- Kelly:** Yeah, million-dollar question, 35-million-dollar question. And it is, you know, how precisely you strike that balance, obviously will vary kind of business-to-business, issue to issue. But I do, and I've spent a lot of time thinking about this, but I do think there are some key kind of anchor points that can help to, to sort of steer you when you're navigating those risks, those obstacles and opportunities. And the guiding principle for me is that is that old adage of like deeds, not words which is a really familiar concept in relation to diversity, equity, inclusion and belonging, but I think it's applicable more broadly to these sorts of issues under the S. And I, because I'm a total nerd, as you know, Ellie, I made a little acrostic for an article I was writing on this. So, starting with the letter D, right? I think a key point is like demonstrating what your purpose is beyond profit. And let's be really clear. Profit doesn't have to be a dirty word. You know, businesses have shareholders and employees, and you need to make profit to be able to invest and to do all that good stuff and to, you know, fulfil your corporate sort of objectives and requirements, but ask yourself, what else are we doing or saying like, why else are we doing this beyond making money? Why are we talking about this thing that we've done? So, it's about your deeds and demonstrating that purpose before profit. The next letter, your E, so for me it's like, even when you're not being watched, is what you're saying demonstrated in the day-to-day strategic behaviours and decisions when you're not being watched. There's another E, employee informed. What I mean by that is ask yourself, we're doing an initiative, we're doing an activity, we're making a statement in the S space, is it actually informed by the needs and the wants and the concerns of our own people? Can I articulate those needs and wants and concerns? Have I asked them or am I assuming it? You know, loads of organisations have got employee resource groups, networks, we call them communities at RPC. And I would say really engage with those communities at the earliest opportunity, find out what they want, what their challenges are, what they see as the organisation's position and ability to make change on whatever the issue is you're talking about. Next letter in deeds is D, data backed, and we love a bit of data in the ESG space because really it helps to sort of demonstrate your commitment and be able to measure your impact with the action that you take. So, you measure, you test it, you refine your intervention so that you can make sure that you are increasing that impact. Going back to that gender pay gap example I mentioned, I think that's quite a good test. Like, would your initiative, your activity, your statement, would it pass the gender pay gap bot test? And then the last letter in deeds is S. Show me the money from that brilliant film from my childhood. How are you using your spending and investment power to further the goals to which the activity speaks because money talks, right? And I think that's quite an interesting lens to put on it. So, following that little acrostic, it won't, I'm not saying that's everything you need to think about, but I find it a useful guide to make sure that you're testing your initiatives and statements against some of the key principles to help you navigate that social washing risk.

Ellie: Yeah, some great things to think about in this space. What do you think the direction of travel is for businesses then when it comes to engaging with social movements and social issues? Is there an expectation for greater accountability when making statements or bringing in initiatives?

Kelly: Yeah, I think so. I think we'll continue to see increasing kind of regulatory focus. I think we'll also see increasing stakeholder focus on the way businesses are spending their money and their power. Are you investing in minority owned businesses? Are you putting money back into the communities in which you operate? Are you advocating for change even where there isn't an immediately clear competitive advantage? I also think and hope, actually, we'll see more and more recognition of the power of purpose beyond profit and understanding actually that this isn't the same as purpose instead of profit. And the fact is we need businesses to create the innovations which will help us eradicate the systemic racism, close the poverty gap, solve the health inequities, all the things that fall under the S. And businesses have to make money, boards need to serve shareholders, so instead of thinking of profit as this dirty word, I prefer to think of how that link between profit and innovation can be hugely positive across the whole ESG agenda, including on social issues.

So, you only have to look at, you know, you mentioned COVID and the pandemic right at the start. And you look at the power and the global impact of the COVID-19 vaccines developed and sold for profit and a game changer for humanity. So, I just think if we can kind of use that lens and that's what the sustainable development goals are driving at in many ways, how do we use innovation? How do we capture that to actually make a change?

Ellie: Absolutely, I think that's a really positive point to end on there. And thank you so much, Kelly, a really topical issue for businesses today, that can't be ignored for all the reasons you've mentioned, but just asking yourself those important questions, deeds not words, is going to be crucial to ensure you minimise as far as you can the risks of social washing. So, thank you.

If you would like to revisit anything we discussed today, you can access transcripts of every episode of the Work Couch podcast by going to our website www.rpc.co.uk/theworkcouch. Or if you have questions for me or Kelly, or perhaps you've got suggestions of topics you'd like us to cover in a future episode, please get in touch. You can email us at theworkcouch@rpc.co.uk. We'd love to hear from you.

Thank you all for listening and we hope you'll join us again in two weeks' time.



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