

Free Speech Union briefing

Woke, Ltd.

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Foreword by the Rt Hon. Sir Jacob Rees Mogg MP

“Every individual necessarily labours to render the annual revenue of society as great as he can. He generally neither intends to promote the public interest, nor knows how much he is promoting it. He intends only his own gain, and he is, in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.” – Adam Smith

Adam Smith’s classical formulation of economic interest benefitting society is as true now as it was when he wrote it – the invisible hand continues to move among us. Businesses need to concentrate on maximising their revenue as they then contribute to the public good. Anything that distracts from this, however worthy it sounds, dilutes rather than enhances societal benefit.

Since Adam Smith wrote it, it is the condition of the poorest that has improved the most. Their life is in every way more comfortable, safer and leisurely than it was in 1776 when it was still “nasty, brutish and short”. By comparison, the rich may benefit from better healthcare but otherwise they were pretty agreeably situated in the 18th Century.

Making business pretend their interest is other than the bottom line is bogus and bad for society. Allowing them to deny services or jobs to people on this basis is a sinister attack on free speech, as is shown by the NatWest scandal. A B Corp subsidiary made a political decision against someone whose views it disliked and then lied to say the decision was not political. What recourse would a Brexiteer employee or job applicant to NatWest have had for holding popular but unfashionable views?

The 'B Corp' phenomenon has gained considerable traction within the UK, with more than 1,900 companies becoming B Corps. The Free Speech Union is troubled that the inclusion of B Corp concepts in the policies of B Corp-certified companies, such as the 'JEDI' principles (Justice, Equity, Diversity and Inclusion), may encroach on the free speech of their employees, as well as their customers and suppliers.

The B Corp Ecosystem

B Corps are for-profit private companies and not to be confused with the 'Benefit Corporation'¹ concept, which is a type of US corporate structure. The directors of B Corps must commit to going beyond maximising profits and to serve 'people' and the 'planet' as well. In the words of B Lab (see below) B Corp is a "designation that a business is meeting high standards of verified performance, accountability and transparency on factors from employee benefits and charitable giving to supply-chain practices and input materials". Among other things, this usually involves changing the company's Articles of Association (the written rules that describe how a business is to be run) and embracing the core principles advocated by B Lab, an American non-profit. (You can read a piece in the *Sunday Times* about B Corp [here](#).)

The B Corp world can be confusing, so it's helpful to start with an outline of how the main organisations and concepts fit together:

B Lab Global (or B Lab)² sits at the top of the ecosystem and is an American non-profit founded in 2006 and registered in Pennsylvania. B Lab is responsible, among other things, for creating the standards, policies and tools that are used for certifying B Corporations.

B Global Network³ is the network of B Labs across the world. Each B Lab is an independent organisation with its own governance set up, licensed by B Lab Global to work in the relevant region.⁴

1 <https://www.bcorporation.net/en-us/faqs/whats-difference-between-certified-b-corp-and-benefit-corporation/>

2 <https://www.bcorporation.net/en-us/>

3 <https://www.bcorporation.net/en-us/movement/global-network/>

4 <https://bcorporation.com.au/wp-content/uploads/2022/07/2cb5f374bb3927a1d2727543503-2.pdf>

B Lab UK⁵ is the UK branch of the B Global Network and was launched in 2015. B Lab UK is a registered charity (no. 1164694).⁶

B Corporation (or B Corp)⁷ is the name given to a for-profit company that has been accredited by its local B Lab within the B Global Network and become a certified B Corporation, or B Corp. While the accreditation process usually involves changing a company's Articles of Association, the B Corp status does not in itself form part of the company's legal personality. It simply signifies that the company has been certified by a licenced B Lab. B Corps must re-certify every three years.

B Corp Climate Collective⁸ was launched in February 2019. It describes itself as "a group of certified B Corporations working together to act on the climate emergency".

The purpose of B Corp certification is to signal that a company meets high standards when it comes to its social and environmental impact, as well as transparency and accountability. Like securing a good ESG (environmental, social and governance) rating, becoming a certified B Corp can help a company attract investors and employees, as well as favourable press coverage. It's a manifestation of 'stakeholder capitalism', a more liberal alternative to the 'shareholder capitalism' advocated by the right-wing economist Milton Friedman who believed the best way for businesses to discharge their social obligations was to maximise profits. As the B Lab UK website says, "Let's use business as a force for good."

In the remainder of this briefing, unless otherwise stated, we use the term 'B Corp' to mean any for-profit company that carries the B Corp accreditation, and which is complying with the expectations of its local B Lab on an ongoing basis.

B Corps in the UK

B Corps of all sizes can be found in most parts of the UK economy, ranging

5 <https://bcorporation.uk>

6 <https://register-of-charities.charitycommission.gov.uk/charity-details/?regId=1164694&subId=0>

7 <https://www.bcorporation.net/en-us/certification/>

8 <https://www.bcorpclimatecollective.org/about-bccc>

from *The Guardian*,⁹ to The Body Shop,¹⁰ Innocent Drinks¹¹ and Couetts.¹² Notably, several UK supermarkets now have a B Corp dedicated aisle.¹³ At the end of 2021 there were just 564 B Corps in the UK; in November 2022 the figure passed 1,000,¹⁴ exceeding the equivalent number for the whole of mainland Europe. At the time of writing (August 2023), the B Lab directory¹⁵ lists over 1,900 B Corps in the UK (nearly 1,500 of which are headquartered here). In other words, the number is growing exponentially.

The B Corp idea is rooted in many of the ESG (environmental, social and governance) principles that are already embedded across much of the corporate world.¹⁶ ESG is commonly understood to have evolved out of CSR (corporate social responsibility). According to TechTarget,¹⁷ while CSR's objective is to set out an idealistic 'big picture' perspective on sustainability, ESG is about the practical ways of discharging a company's social and environmental responsibilities, including the development of metrics that can be used to track a company's progress in these areas over time. ESG data is also be used to report back to shareholders and by financial information and analytics companies to evaluate companies. While CSR is largely self-regulated within companies, ESG involves external regulation. In the UK's financial sector, for example, the Financial Conduct Authority (FCA) maintains an [ESG Sourcebook](#), which sets out the regulator's ESG expectations.

Despite the growing popularity of the B Corp concept in the UK, it can have negative ramifications for freedom of expression:

- B Lab UK takes equity, diversity and inclusion (EDI) polices, which are already being used in some workplaces to suppress freedom of expression, and turbocharges them, incorporating 'J' for social justice, so that companies must embrace this additional element to achieve

9 <https://www.theguardian.com/membership/2020/jan/04/guardian-b-corp-status-julie-richards-climate>

10 <https://www.thebodyshop.com/en-gb/about-us/our-story/b-corp/a/a00004>

11 <https://www.innocentdrinks.co.uk/a-bit-about-us/bcorp>

12 <https://www.couetts.com/about/b-corp.html>

13 <https://www.thegrocer.co.uk/ocado/ocado-launches-dedicated-aisle-for-b-corp-brands/653211.article>

14 <https://bcorporation.uk/reinventing-business/by-b-lab-uk/how-we-got-1000-times-better/>

15 <https://www.bcorporation.net/en-us/find-a-b-corp/>

16 <https://usca.bcorporation.net/zbtcz5z23z/how-esg-factors-align-with-b-corp-values/>

17 <https://www.techtarget.com/whatis/feature/ESG-vs-CSR-vs-sustainability-Whats-the-difference>

and maintain B Corp status. JEDI commitments are reflected in the B Corps assessment process.

- B Corps sign-up to principles that impose a particular point of view on contentious political issues such as Net Zero and ‘racial justice’ (a point of view more commonly found on the Left, but not exclusively).
- Companies seeking B Corp accreditation are required to amend their Articles to ‘Mission Lock’ social justice principles, i.e., the fiduciary responsibilities of the directors are changed so that they are legally obliged to comply with a politically contentious agenda and ensure that their employees and suppliers – in some cases, even their customers – also comply.
- Ideas promoted by B Lab, such as the [Declaration of Interdependence](#), may encourage ‘group think’ across the B Corps network, with negative implications for free speech.
- B Lab UK is lobbying for legislation (the Better Business Act) to amend section 172 of the 2006 Companies Act, whereby all British companies would be forced to incorporate B Corps-type principles into their operations. If the law is changed, which it might if Labour wins the next General Election, and companies follow the B Corp template, this could lead to compliance with certain contentious social justice principles becoming mandatory for British businesses.
- B Lab UK is not a statutory or chartered body like the FCA or the Chartered Insurance Institute.¹⁸ The extent of external oversight and accountability is therefore unclear (beyond charity law requirements).

B Lab UK’s [guide to becoming a B Corp](#) outlines seven steps a company must take to become certified as a B Corp company.¹⁹ In this briefing we focus on stage 3 – the B Impact Assessment or BIA – and stage 4 – the B Corp Legal Requirement.

The B Impact Assessment (BIA)

The BIA is a tool created by B Lab that helps a business measure and manage its social and environmental impact, both internally and externally. There are five ‘Impact Areas’ and all applicant companies must score 80+

¹⁸ <https://www.ftadviser.com/your-industry/2022/05/12/why-advice-businesses-are-becoming-b-corps/>

¹⁹ <https://bcorporation.uk/b-corp-certification/certification-overview/>

to qualify as a B Corp.

Diversity, equity and inclusion is a sub-heading under the fourth Impact Area, 'Community'. B Lab UK's Measure Your Impact document says the following in its preamble: "The BIA is a comprehensive measurement of your company's entire performance, from your supply chain and carbon footprint to your charitable giving, diversity and inclusion policies and employee benefits."

Equity, diversity and inclusion ('EDI') policies have long been a source of concern for the Free Speech Union (FSU), with approximately 5% (or 100) of our 2,000 cases arising directly from EDI being imposed in some way at work. These 100 EDI cases range from employees simply raising concerns about a new policy through to disciplinaries, or even dismissal, for asking the 'wrong' questions during an EDI training course, sometimes after a course leader has assured participants they're in a 'safe space' and can speak freely without fear of repercussions. In total, 20% (or 400) of our cases have involved workplace investigations, employee suspensions or employee dismissals. Many of these outcomes can also be traced back to a company's EDI policy, or to a social media policy that refers to the EDI policy.

In summary, our concerns with EDI policies are as follows:

- They are often used to import into British workplaces contentious political ideas that originated in what have been described as 'grievance studies' departments in American universities (gender studies, queer studies, whiteness studies), such as critical race theory (including the idea that all white people are privileged and it's not enough for them to be non-racist, they must be 'anti-racist') and gender identity ideology. These ideas are often enforced by B Corp-certified companies as if they were uncontroversial and apolitical, an example being Coutts's decision to de-bank Nigel Farage, which was recorded as follows in an internal document: "This was not a political decision, but one centred around inclusivity and purpose."
- The concepts of equity, diversity and inclusion are often not clearly defined and, even when they are, the definitions can change over time. A good example is the metamorphosis of 'equality' into 'equity', with a focus on equality of opportunity shifting to a focus on equality of outcome between different identity groups.

- The suppression of dissent on the grounds that certain opinions are contrary to a company's EDI policies is often extended to things employees' say outside the workplace, such as on their personal social media accounts.
- Overzealous enforcement of EDI policies often means companies end up in breach of the Equality Act 2010 which prohibits discriminating against employees on the basis of their 'protected' religious or philosophical beliefs, the 'Maya Forstater' case being a good example.²⁰ One concern we have is that if UK law is changed whereby all British companies have to incorporate B Corps principles into their operations, the Equality Act would also have to be amended to dilute workplace protections for employees' speech rights.

But B Lab takes EDI a step further. It incorporates a new letter, 'J' for justice, thereby creating the JEDI concept. There are dedicated JEDI sections on both the B Lab UK²¹ and B Lab²² websites. [B Lab UK's JEDI page](#) quotes the following "global anti-racism stance":

As a global network, B Lab stands against all forms of oppression, including racism, transphobia, classism, sexism, and xenophobia. We commit to focused and sustained action to dismantle racist systems, policies, practices, and ideologies within ourselves and our networks. As we continue to learn about injustice, we embrace radical reorientation of our consciousness and will listen to the voices of Black, Brown, Indigenous, and marginalised peoples to catalyse equitable outcomes for all.

This is the language of critical social justice ideology, an authoritarian creed that takes it for granted that various systems of oppression are embedded in society, as well as in the consciousness of ordinary citizens, and prescribes various radical solutions that often involve language policing that inevitably leads to 'cancelling' people who use 'problematic' words and phrases or have the 'wrong' opinions. The 'Global JEDI Action' section of the same webpage confirms that a review of BIA is currently underway, with the goal of identifying updates critical to realising JEDI and 'anti-racist' commitments across all global B Lab organisations. This suggests that

20 <https://www.theguardian.com/society/2022/jul/06/maya-forstater-was-discriminated-against-over-gender-critical-beliefs-tribunal-rules>

21 <https://bcorporation.uk/about-b-lab-uk/our-team-and-organisation/jedi-at-b-lab/>

22 <https://www.bcorporation.net/en-us/news/blog/b-lab-global-jedi-strategic-plan/>

we will see B Lab UK embed these principles even more deeply into the BIA scoring process. Indeed, in May 2023, B Lab published its [summary report](#) on the preliminary consultation for evolving the B Corp certification standards. The JEDI section (pages 35-36) recommends that JEDI expectations be made less vague via a “menu of requirements” which all B Corp-certified companies will have to comply with.

When the Coutts/Farage dossier²³ was published, many were perplexed to read sentences such as the one quoted above, “this was not a political decision but one centred around inclusivity and purpose” (page 1), as well as “commentary and behaviours that do not align to the bank’s purpose and values have been demonstrated” (page 9). Words like ‘inclusivity’, ‘purpose’ and ‘values’ can be found in B Lab UK’s documentation, suggesting that one of the reasons Farage was de-banked was so Coutts could retain its B Corp status. The Free Speech Union is concerned that if more financial services companies become B Corp certified, more people will be de-banked because their “commentary and behaviours... do not align” with the ‘values’ of an American non-profit.

A further free speech consequence for a company trying to meet or maintain the BIA threshold score is the potential narrowing of ‘acceptable’ political views among employees or customers. Take climate change, for instance. Whatever stance one might take on the issue, climate scepticism is a view that employees, customers and suppliers should be free to express without fearing it will have negative consequences.²⁴ An October 2021, an Ipsos poll²⁵ highlighted that public support for Net Zero drops significantly once respondents are made aware that there will be cost they’ll have to pay – for example, support for Low Traffic Neighbourhoods drops from 53% to 18%. This suggests the so-called consensus about the urgency of reducing our carbon emissions isn’t as ‘settled’ as the advocates of Net Zero and related measures believe. Yet in December 2019, at COP25 in Madrid, the B Corps Climate Collective²⁶ put out a press release²⁷ that included the following statement: “Today we affirm

23 <https://www.documentcloud.org/documents/23881614-private-redacted>

24 <https://www.telegraph.co.uk/news/2023/05/18/europe-turning-against-prophets-of-climate-alarmism/>

25 <https://www.ipsos.com/en-uk/public-support-majority-net-zero-policies-unless-there-is-a-personal-cost>

26 <https://www.bcorpclimatecollective.org>

27 <https://static1.squarespace.com/static/5db888480800f10dfca7c683/t/5df0a1bc9e81783182622dff/1576051133080/Press+Release+%26+B+Corp+Statement+for+NetZero2030+COP25.pdf>

our commitment to collective and immediate action to halt and reverse the current climate trajectory and to build an economic system whose purpose is to create shared and durable prosperity for all and for the long term.”

With statements like this, it is hard to see how a BIA pass score might be obtained by a company that doesn't encourage its stakeholders to fall into line with its prevailing view on the 'climate emergency' – a requirement that could lead to any employee expressing climate contrarian views being penalised. Indeed, the direction of travel is for environmental standards within BIA to be enforced more widely. Page 47 of the May 2023 [summary report](#) says that “more specification on the scope of suppliers will be added e.g. to focus on the most material suppliers in terms of environmental impact”.

Mission Lock

Stage 4 of the B Corp accreditation process is the Legal Requirement.²⁸ This entails a company updating its Articles²⁹ to include “mission-aligned legal language”. In effect, this commits a company to the “triple bottom line”³⁰ in its constitutional documents. The triple bottom line is a business concept in which companies must measure the impact of their behaviour on society and the environment, and not just their share price – “profits, people and planet”, in the words of B Lab.

Given how integral JEDI is to B Lab UK's interpretation of social and environmental impact, we're concerned that Mission Lock also locks out free speech when it comes to issues like 'racial justice' and Net Zero.

Something we find in our case work at the FSU is that, when challenged, companies very often double down on their EDI policies, even after we've pointed out they contain unlawful clauses – for example, in relation to the expression of gender-critical beliefs. Requiring companies to lock in this intolerance of dissenting points of view on certain issues is bound to limit free speech in the workplace.

28 <https://bcorporation.uk/b-corp-certification/how-to-certify-as-a-b-corp/legal-requirement/>

29 https://www.gov.uk/limited-company-formation/memorandum-and-articles-of-association#:~:text=%27articles%20of%20association%27%20%2D%20written_directors%20and%20the%20company%20secretary

30 <https://online.hbs.edu/blog/post/what-is-the-triple-bottom-line>

Once accredited, all B Corps sign the [Declaration of Interdependence](#). This commits the companies to “work together to reinvent the role of business in society”. From a free speech point of view, we’re concerned that this messianic philosophy, together with the Mission Lock, risks embedding ‘group think’ across a range of issues, with any employees dissenting from the ‘party line’ being penalised.

The Better Business Act

A section of B Lab UK’s website is dedicated to [campaigns](#), including its promotion of the ‘Better Business Act’ (‘BBA’).³¹ The [BBA website](#) explains that this legislative proposal was drafted by B Lab UK, which acts as BBA’s Secretariat. The BBA’s objective is to amend Section 172 of the Companies Act 2006 so that the duty of a company director will henceforth be to promote the purpose of the company and operate the company in a manner that benefits the members, wider society, and the environment (“profits, people and planet”). In effect, all companies in the UK would be in a similar position to a B Corp-certified company that had implemented Mission Lock.

This would revise the [fiduciary duty](#) of company directors, imposing a legal duty on them to have regard for the impact of their company’s activities on society and the environment, both internally and externally. Although that stops short of insisting their companies adopt JEDI policies, we’re concerned that B Lab UK’s JEDI template could prove attractive to company directors as an ‘off the shelf model’ if they’re concerned about complying with the new law, with companies seeking B Corp certification as part of a ‘belt and braces’ approach. Indeed, wanting to generate business for B Lab UK may well be part of the reason it’s campaigning for this new law. The cost of submitting an application to become B Corp-certified is £250, followed by a minimum of £1,000 to become certified, payable every year while the certificate remains in place. For companies with an annual turnover of £750 million, the annual certification fee is £50,000.

Objections to the FSU’s concerns

Finally, it is worth addressing and anticipating arguments that might be

³¹ <https://betterbusinessact.org>

marshalled against the concerns raised in this briefing.

The first is that B Lab UK claims to support free speech. Following the Farage/Coutts scandal, B Lab UK told the *Telegraph*, “B Corps should act in accordance with regulation and industry best practice. We support the protection of freedom of expression.”³² The problem with statements like this is that they can only be tested when B Lab’s principles conflict with the right to freedom of expression in real-life – and when they did in the Farage case, the right to free speech was disregarded in favour of ‘inclusiveness’ and ‘purpose’. We need to understand how B Lab UK might respond to an employee who has religious objections to celebrating Pride month or using the preferred gender pronouns of their trans employees, or to an employee who espouses a ‘colour blind’ approach to combatting racism rather than the ‘anti-racism’ approach recommended by critical race theorists and favoured by B Lab.

The second objection is that the B Corp phenomenon simply reflects what most of the UK population want and expect. B Lab UK’s Campaigns page states: “77% of the UK public believe businesses should have a legal responsibility for people and the planet.”³³ The problem with statements like this is that they gloss over the fact that polling results can vary according to the wording of the question(s). Indeed, a deeper look at the [results](#) of the same April 2023 poll, which is being referred to above, shows that, while 73% agree businesses should have a responsibility to protect the environment, that drops to just 48% when the issue at stake is addressing social problems. (Confusingly, both these levels of agreement are below the headline figure of 77%). We would infer from this poll that businesses should beware of conflating social and environmental issues.

32 <https://www.telegraph.co.uk/politics/2023/07/30/nigel-farage-diversity-scheme-bcorp-coutts-account-closure/>

33 <https://bcorporation.uk/act-and-learn/campaig>

