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A Comparative Analysis of Directors' Fiduciary Duties in Ghanaian and UK Company Law

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Abstract

This paper examines the fiduciary duties of company directors in Ghana and the United Kingdom, two jurisdictions bound together by a shared equitable inheritance yet separated by strikingly different reform histories. Ghana codified directors' duties as early as 1963, on the recommendation of Professor L. C. B. Gower, more than four decades before the United Kingdom attempted the same exercise in the Companies Act 2006. The study pursues three questions: whether the content and structure of the duties in the two systems converge; how the jurisdictions differ in their standard of care, stakeholder orientation and enforcement machinery; and what each system might usefully borrow from the other. A doctrinal research approach is adopted, supplemented by the functional method of comparative law and, where the analysis reaches enforcement, by publicly reported regulatory and enforcement evidence. The primary materials are the Companies Act, 2019 (Act 992) of Ghana, the Companies Act 2006 of the United Kingdom, and the case law of both jurisdictions, read alongside leading scholarly commentary and the recent debate on corporate purpose, stakeholder governance and legal transplants. The main findings of the study demonstrate that (i) the substantive core of the duties, loyalty, good faith, proper purpose and the avoidance of conflicts, is remarkably convergent, reflecting a common equitable root; (ii) the jurisdictions diverge in the architecture of the duty of care and in stakeholder framing, with section 172 of the UK Act mandating regard to non-shareholder interests while the Ghanaian formulation remains company-centred and largely permissive; and (iii) the sharpest divergence lies not in the substance of the duties but in the channel and visibility of their enforcement, the United Kingdom relying on a mix of private litigation and a high-volume, publicly reported disqualification regime while Ghana enforces substantially through sectoral regulation and the criminal law, which generate little reported company-law precedent. Drawing on regulatory and enforcement data as well as the case law, the study cautions against treating the scarcity of reported Ghanaian decisions as straightforward proof of weaker enforcement, and offers reform recommendations for both systems.

Keywords: Companies Act 2006; Companies Act 2019 (Act 992); Comparative company law; Directors; Enforcement; Fiduciary duties; Legal transplants; Stakeholder governance

Introduction

Few questions in company law matter as much, in practice, as the question of what directors owe the companies they serve. The separation of ownership from control places enormous discretionary power in the hands of a small group of individuals who manage assets that belong, in economic substance, to others. The law's answer to the risks created by that separation has always been the fiduciary idea: directors must be loyal, they must act in good faith, and they must not allow their personal interests to collide with the interests of the company. How a legal system articulates and enforces that idea says a great deal about the maturity of its corporate governance regime, and it bears directly on investor confidence and the cost of capital.

A comparison of Ghana and the United Kingdom is unusually instructive, and not for the reason one might first assume. The received story of legal transplantation, in which a former colony passively inherits English doctrine, is upended here. Ghana was in fact the pioneer. Acting on the Final Report of the Commission of Enquiry chaired by Professor L. C. B. Gower (1961), Ghana enacted the Companies Act, 1963 (Act 179), which set out directors' fiduciary duties in statutory form at a time when English law still left those duties scattered across the reports of the Court of Chancery. The United Kingdom did not codify the general duties of directors until the Companies Act 2006, sections 170 to 177 of which restate the old equitable and common law rules. Ghana has since modernised its regime through the Companies Act, 2019 (Act 992), whose sections 190 to 205 restate, sharpen and extend the 1963 scheme. The two systems therefore offer a rare natural experiment: a shared doctrinal ancestor, codified at different moments, under different pressures, and enforced through very different institutions.

The scholarly conversation around these regimes remains lively, and it has lately taken on a sharper edge. In the United Kingdom, debate has centred on whether codification froze the creative capacity of equity (Sealy, 1962; Davies & Worthington, 2016), on the meaning and utility of the enlightened shareholder value formula in section 172 (Keay, 2007), and, most recently, on the moment at which directors must begin to weigh creditor interests, a question the Supreme Court confronted in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25. Around that doctrinal core a larger argument about corporate purpose has grown up. The rise of stakeholder capitalism and of environmental, social and governance expectations has prompted a fresh contest over whom the company is for: Bebchuk and Tallarita (2020) mount a sceptical case against what they call stakeholderism, doubting that an exhortation to serve everyone can do real work, while Mayer (2022) replies that trade-offs between constituencies are the ordinary stuff of management and no reason to abandon a broader conception of purpose. The comparative theorist, meanwhile, has grown wary of the very metaphor of the transplant on which a study of this kind might seem to rest. Watson (1974) treated the borrowing of rules as easy and commonplace; Legrand (1997) insisted that a rule stripped of its interpretive culture does not survive the journey; and Teubner (1998) suggested that a borrowed rule behaves less like a transplant than like an irritant, provoking the host system into unforeseen adaptations. In Ghana, commentary has concentrated on whether Act 992 cures the enforcement weaknesses of Act 179, and on the continuing reliance of Ghanaian courts on English authority in the absence of a dense body of local precedent (Gower, 1961; Ghartey, 2020). What is missing is a sustained, structured comparison of the two regimes as they now stand, one that tests these competing intuitions rather than assuming them, and that is the gap this paper addresses.

The objective of the study is accordingly threefold. First, it asks to what extent the content and architecture of directors' fiduciary duties in Ghana and the United Kingdom converge (RQ1). Secondly, it asks where and why the two systems diverge, particularly on the standard of care and skill, the treatment of stakeholders, and the machinery of enforcement (RQ2). Thirdly, it asks what lessons each jurisdiction can draw from the other (RQ3). The method is doctrinal, supplemented, where the argument reaches enforcement, by publicly reported regulatory and enforcement material. The paper analyses the primary legal materials of both systems, statutes and decided cases, using the functional comparative technique associated with Zweigert and Kötz (1998), which compares rules by reference to the practical problems they solve rather than their formal labels.

This paper is organised as follows. Following this introduction, the second part reviews the theoretical and doctrinal literature on fiduciary obligation and develops the research questions. The third part sets out the research design and methodology. The fourth part presents the findings across five comparative dimensions and discusses their implications. The paper concludes with the author's evaluation of the results, recommendations for reform, limitations, and directions for future research.

Literature Review

This review serves two purposes. It first establishes the theoretical and conceptual foundations of fiduciary obligation on which both regimes rest, and it then surveys the doctrinal and comparative scholarship on each jurisdiction in order to isolate the questions that remain open. Because the study is doctrinal rather than quantitative, the review culminates in research questions rather than statistical hypotheses.

Theoretical and Conceptual Background

The fiduciary concept is one of equity's most distinctive contributions to commercial life. In *Bristol and West Building Society v Mothew* [1998] Ch 1, Millett LJ explained that a fiduciary is a person who has undertaken to act for another in circumstances giving rise to a relationship of trust and confidence, and that the distinguishing obligation of such a person is loyalty. Finn (1977) had earlier argued that the label matters less than the function: fiduciary rules exist to hold a person to the standard of conduct appropriate to the office undertaken. Sealy (1962) famously cautioned that the term describes a situation rather than a single uniform relationship, a warning that remains valuable when comparing directors with trustees. Millett (1998) later defended the strictness of the rules on the ground that commerce depends on the integrity of those who manage other people's affairs.

Economic theory supplies a complementary explanation. Jensen and Meckling (1976) modelled the company as a nexus of contracts in which agency costs arise whenever a principal delegates

decision-making power to an agent whose interests are imperfectly aligned with her own. Fiduciary duties, on this account, are a standardised legal answer to agency costs: they economise on contracting by supplying default terms of loyalty that parties would find prohibitively expensive to negotiate case by case. The prophylactic severity of the no-conflict and no-profit rules, laid down in *Aberdeen Railway Co v Blaikie Brothers* (1854) 1 Macq 461 and applied with celebrated rigour in *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134 and *Boardman v Phipps* [1967] 2 AC 46, makes sense in these terms. Liability attaches without proof of bad faith or loss precisely because dishonesty is difficult to detect and deterrence is cheap.
One conceptual point requires emphasis at the outset. Not everything a director must do is fiduciary. In *Mothew*, Millett LJ was at pains to separate the duty of care, skill and diligence, which is a common law duty sounding in negligence, from the true fiduciary duties of loyalty and fidelity. The historical standard of care was strikingly lenient and subjective, as *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407 shows, and it was only in decisions such as *Re D'Jan of London Ltd* [1994] 1 BCLC 561 that English law moved to an objective baseline, later entrenched in section 174 of the Companies Act 2006 (Lowry, 2012). This paper follows the comparative convention of treating the duties of loyalty and the duty of care together, since both statutes now house them in a single scheme, while remaining alert to their different juridical characters.

A word should be said, finally, about the comparative scholarship itself, for it frames the questions that follow. The convergence-and-divergence debate that dominated comparative corporate law at the turn of the century asked whether national systems were being drawn towards a common, largely Anglo-American, template. That debate has matured. Cabrelli and Siems (2015), deploying a case-based and quantitative method across several jurisdictions, found the picture more textured than either the convergence enthusiasts or their critics had allowed: systems move towards and away from one another on different variables and at different speeds. Gelter and Helleringer (2018) show, through the specific example of the corporate opportunities doctrine, how a rule can travel between systems and yet acquire a local accent. These studies, together with the culturalist caution of Legrand (1997), Kahn-Freund's (1974) reminder that a transplanted rule depends for its life on the institutions that receive it, and Teubner's (1998) image of the borrowed rule as an irritant, counsel against treating any two systems as either simply converging or simply diverging. They support the disaggregated, dimension-by-dimension approach adopted here, and they warn that a shared doctrinal source, of the kind Ghana and the United Kingdom possess, guarantees convergence in wording but not in operation, a distinction that becomes central when the analysis reaches enforcement.

Doctrinal Review and Development of Research Questions

The UK literature on the codified duties is extensive. Davies and Worthington (2016) treat sections 170 to 177 as a restatement rather than a replacement of equity, pointing to section 170(4), which directs courts to interpret the general duties in accordance with the common law rules and equitable principles they replace. Kershaw (2012) situates the duties within their governance context, stressing that the practical bite of any duty depends on who may sue and with what ease. Keay (2007) subjects section 172 to close scrutiny, doubting whether the

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obligation to have regard to employees, suppliers, the community and the environment adds enforceable substance to the shareholder-centred core, since the interests listed remain subordinate to the success of the company for the benefit of its members.

That section 172 debate has since widened into a larger argument about corporate purpose, and any current comparison must engage it. Keay's scepticism about the enforceability of the enlightened shareholder value formula now sits within a contest between those, like Bebchuk and Tallarita (2020), who regard stakeholder rhetoric as either empty or positively harmful, capable of shielding managers while doing little for the constituencies it names, and those, like Mayer (2022) and the contributors to the sustainability literature (Sjåfjell & Bruner, 2019), who see in it the beginnings of a genuine reorientation of the company towards the social and environmental conditions of its own survival. The United Kingdom has given the debate a statutory edge: the Companies (Miscellaneous Reporting) Regulations 2018 now require large companies to publish a section 172(1) statement describing how the directors have had regard to the listed matters. Whether that requirement changes conduct or merely records it is precisely the sort of question doctrinal analysis cannot settle, and it is flagged here as a boundary on what the comparison can claim.

The Ghanaian literature is thinner, which is itself a datum of comparative significance. The foundational document remains the Gower Report (1961), which recommended codification precisely because a young legal system with few reported decisions could not sensibly ask business people to extract their obligations from a century of English chancery reports. The courts have nonetheless produced a modest but instructive jurisprudence. *Okudjeto v Irani Brothers* [1974] 1 GLR 374 confirmed the willingness of the Ghanaian courts to police the conduct of those in control of a company at the suit of aggrieved members. *Pinamang v Abrokwa* [1991] 2 GLR 384 applied fiduciary principles against a director who preferred his personal interest to that of the company, while *Commodore v Fruit Supply (Ghana) Ltd* [1977] 1 GLR 241 explored the boundaries of directorial office; and the Supreme Court has continued to shape the field, most notably in *P.S. Investments Ltd v CEREDEC* [2012] 1 SCGLR 618, where it examined the reach of the rule in *Foss v Harbottle* in Ghanaian law. Act 992 has now restated the duties in sections 190 to 205, created a dedicated Office of the Registrar of Companies, and expanded members' remedies. Ghartey (2020), writing against the backdrop of the 2017 to 2019 financial-sector insolvencies, concludes that Act 992 adds specific rules to a principles-based core, and observes that Ghanaian case law on directors' duties remains thinner than six decades of tailored legislation would suggest.

One feature of the Ghanaian landscape deserves emphasis at this stage, because it bears directly on how enforcement should later be measured. The thinness of reported company-law litigation on directors' duties does not mean that directorial misconduct goes unaddressed. Much of it surfaces instead through regulatory resolution and the criminal law, most visibly in the financial-sector clean-up of 2017 to 2019 discussed below, and through the Supreme Court's occasional but authoritative interventions on the boundaries of members' litigation. Any assessment of enforcement that counts only reported company-law decisions will therefore understate the reach of the law, a point to which the analysis returns. Sustained comparison of the reformed Ghanaian scheme against the UK benchmark, attentive to these different channels of enforcement, remains scarce.

Three research questions emerge from this review. RQ1: to what extent do the content and structure of directors' fiduciary duties under Act 992 and the Companies Act 2006 converge? RQ2: in what respects do the regimes diverge, with particular reference to the standard of care and skill, stakeholder orientation, and enforcement? RQ3: what reform lessons does the comparison yield for each jurisdiction? The working proposition, drawn from the shared equitable ancestry of the two systems, is that convergence will dominate at the level of substantive principle while divergence will concentrate in remedial design and institutional capacity.

Table 1: Summary of Literature Review

Author (Date)	Subject	Jurisdiction / Focus	Method	Findings
Sealy (1962)	Nature of fiduciary relationships	England and Wales	Doctrinal	The fiduciary label describes a situation, not a uniform relationship; content varies with the office undertaken
Jensen & Meckling (1976)	Agency costs and ownership structure	Theory of the firm	Economic modelling	Delegated management generates agency costs; legal duties operate as standardised loyalty terms
Finn (1977)	Fiduciary obligations	Common law world	Doctrinal	Fiduciary rules hold office-holders to the standard of conduct their undertaking demands
Keay (2007)	Section 172 CA 2006	United Kingdom	Doctrinal	Enlightened shareholder value adds rhetorical breadth but little enforceable substance for stakeholders
Kershaw (2012)	Directors' duties in context	United Kingdom	Doctrinal and contextual	The practical force of a duty depends on the enforcement architecture surrounding it
Ghartey (2020)	Directors' duties under Act 992	Ghana	Doctrinal	Act 992 adds specific rules to a principles-based core; local case law remains

Author (Date)	Subject	Jurisdiction / Focus	Method	Findings
				underdeveloped
Lowry (2012)	Duty of care, skill and diligence	UK and Australia	Doctrinal	The objective baseline of care is now the irreducible core of directorial competence
Davies & Worthington (2016)	Principles of modern company law	United Kingdom	Treatise	Sections 170 to 177 restate rather than replace equity; prior case law remains interpretively central
Legrand (1997)	The impossibility of legal transplants	Comparative law	Doctrinal and critical	A rule detached from its interpretive culture does not survive transplantation unchanged
Teubner (1998)	Legal irritants	UK and Germany	Doctrinal	Borrowed rules act as irritants, provoking unforeseen local adaptation rather than clean transfer
Cabrelli & Siems (2015)	Convergence and transplants	Multiple jurisdictions	Case-based and quantitative	Systems converge and diverge selectively; shared sources do not guarantee shared operation
Gelter & Helleringer (2018)	Corporate opportunities as transplant	Common law systems	Doctrinal	The corporate opportunities doctrine travels widely while acquiring local accents
Bebchuk & Tallarita (2020)	Stakeholder governance	United States	Conceptual, economic and empirical	Stakeholderism is largely illusory and may impede real protection of stakeholders
Mayer (2022)	Corporate purpose	United Kingdom	Doctrinal and normative	Trade-offs between constituencies are manageable; a broader corporate purpose is defensible

Source: Author's compilation

Research and Methodology

The study adopts a doctrinal research approach, sometimes called black-letter analysis. Doctrinal research, as Hutchinson and Duncan (2012) describe it, locates, interprets and synthesises the authoritative sources of law, statutes, decided cases and recognised commentary, in order to state what the law is and to expose its internal coherence or incoherence. The approach suits the present enquiry because the object of study is the content of legal rules and the reasoning of courts, not the behaviour of directors in the field. No human participants were involved and no empirical dataset was collected, so ethics approval was not required.

To the doctrinal core the study adds the functional method of comparative law (Zweigert & Kötz, 1998). Rules are compared not by their statutory labels but by the practical governance problem each is designed to solve: disloyalty, self-dealing, incompetence, and the diversion of corporate opportunity. Five comparative dimensions structure the analysis, namely codification technique, the content of the loyalty duties, the standard of care and skill, stakeholder orientation, and enforcement. The primary materials are the Companies Act, 2019 (Act 992) and the Companies Act, 1963 (Act 179) of Ghana, the Companies Act 2006 of the United Kingdom, and the reported decisions of the courts of both jurisdictions. Secondary materials comprise the leading treatises and journal literature identified in the review.

The five dimensions were not chosen arbitrarily, and the choice is worth defending. Each corresponds to a distinct governance problem that any system of directors' duties must solve, and together they trace the life of a duty from its source to its enforcement. Codification technique asks where the rules come from and how they relate to their equitable origin. The content of the loyalty duties asks what the core obligation actually requires. The standard of care asks how competence is measured. Stakeholder orientation asks whose interests the director must weigh. Enforcement asks what happens when the duty is broken and who can make it bite. A comparison that stopped at any one of these, at the wording of the loyalty duty, say, without reaching enforcement, would risk the very error the functional method exists to avoid, namely mistaking formal similarity for practical equivalence.

Other analytical frames were considered and set aside for stated reasons. A leximetric or legal-origins approach, which codes rules numerically and correlates them with economic outcomes across many jurisdictions (Cabrelli & Siems, 2015), draws its power from large samples and is ill-suited to the close reading of two systems attempted here. A strongly culturalist approach, of the kind Legrand (1997) advocates, would deny at the outset that the two regimes are usefully comparable, a position difficult to sustain when one of them was drafted by the very hand that later shaped English scholarship. A law-and-economics evaluation of the efficiency of each rule would be illuminating, but it would require behavioural and market data that the doctrinal method does not generate. The functional method was preferred because it takes formal rules seriously while insisting that they be judged by the problems they solve, which is the right posture for two systems that share a vocabulary but not an institutional setting.

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One limitation of the method should be acknowledged here rather than deferred to the end. Doctrinal analysis can establish what the rules require and how courts have reasoned, but it cannot measure how directors actually behave or how vigorously the rules are enforced. Where the analysis touches enforcement, it therefore supplements the doctrinal core with publicly reported regulatory and enforcement material, official statistics on director disqualification in the United Kingdom and the documented record of Ghana's financial-sector clean-up, treating these as secondary evidence rather than as a substitute for the empirical fieldwork the subject ultimately demands. Figure 1 presents the conceptual model of the study.

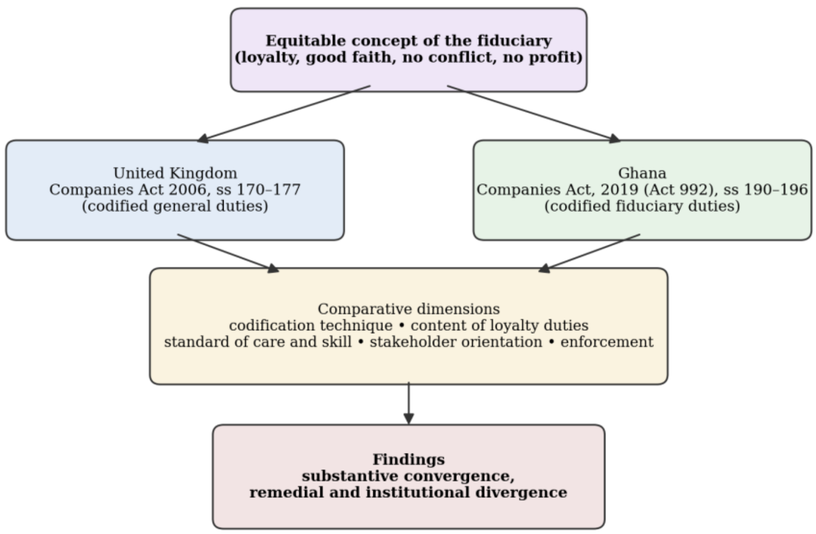

Figure 1: Conceptual Model of the Study; *Source:* Author

Table 1 above summarises the principal scholarly works that inform the analytical framework.

Findings and Discussions

Codification Technique and the Place of Equity

The first finding concerns chronology, and it deserves more attention than it usually receives. Ghana codified directors' duties in 1963, on Gower's recommendation, at a time when the United Kingdom itself regarded codification as unnecessary or impossible. Section 203 of Act 179 declared that directors stand in a fiduciary relationship towards the company and must act with loyalty and in good faith, and the surrounding provisions worked out the consequences for conflicts of interest and secret profits. The United Kingdom reached the same destination only in 2006, after the Law Commission and the Company Law Review had concluded that accessibility demanded a statutory statement. Sections 170 to 177 of the Companies Act 2006 now set out seven general duties, owed to the company alone (s. 170(1)), and section 178 preserves the old remedial consequences.

Both statutes handle the relationship with equity in a similar, and similarly subtle, way. Section 170(4) of the UK Act instructs courts to interpret the general duties in accordance with the equitable principles they replace, so *Regal (Hastings)* and *Boardman* remain live authority. Act 992 achieves a comparable result through its restatement technique and through the general reception of common law and equity in Ghanaian law: the codified duties in section 190 and the provisions that follow are read against the equitable background from which they were drawn, and Ghanaian courts have long treated English decisions as persuasive. The consequence, and the first answer to RQ1, is that codification in neither system severed the umbilical cord to equity. What Gower designed for Ghana in 1963 is, in functional terms, what Westminster adopted in 2006, a fact that complicates any simple narrative of one-way legal transplantation. It is, if anything, a small vindication of Teubner's (1998) intuition: the same equitable idea, received into two institutional settings at different times, has not remained inert but has been worked and reworked by each, so that the shared inheritance now speaks with two accents rather than one voice.

The Content of the Loyalty Duties

On the substance of loyalty the convergence is close to complete. The Ghanaian director must act in good faith, in what the director believes to be the best interests of the company, and for a proper purpose; the UK director must act within powers and for the purposes for which they are conferred (s. 171), and must act in the way the director considers, in good faith, would be most likely to promote the success of the company (s. 172). Both formulations are subjective at their core, echoing *Re Smith and Fawcett Ltd* [1942] Ch 304, where Lord Greene MR located the touchstone in what the directors, not the court, consider to be in the company's interests, but both are policed objectively at the margins through the proper purpose doctrine. *Howard Smith Ltd v Ampol Petroleum Ltd* [1974] AC 821, in which an allotment of shares designed to dilute a majority was struck down despite the directors' honest belief in its wisdom, is authority in London and persuasive in Accra alike.

The conflict rules tell the same story. The UK Act separates the duty to avoid unauthorised conflicts of interest (s. 175), the duty not to accept benefits from third parties (s. 176), and the duty to declare an interest in a proposed transaction (s. 177). Act 992 gathers equivalent material into its scheme on conflicts, disclosure and the prohibition of secret profits in sections 190 to 195, and preserves the older equitable duty to account for company property. The strictness of the underlying principle is common ground. *Bhullar v Bhullar* [2003] EWCA Civ 424 shows the English courts capturing corporate opportunities even where the company could not itself have taken them, and *Pinamang v Abrokwa* demonstrates the Ghanaian courts' comparable refusal to let a director profit from a position of trust. The corporate opportunities doctrine is, in this respect, a textbook instance of a rule that has travelled: Gelter and Helleringer (2018) trace its movement between common law systems and note that, for all the variation in local expression, its prophylactic core has proved remarkably stable. Ghana's reception of that core, through statute and through the persuasive authority of English decisions, is of a piece with the pattern they describe. *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244 pushed loyalty further still, requiring a director to disclose his own wrongdoing, and there is no reason to think a

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Ghanaian court applying section 190 would resist that logic. One shared boundary should be noted: in both systems the duties are owed to the company and not, absent special circumstances, to individual shareholders, a proposition settled since *Percival v Wright* [1902] 2 Ch 421 and affirmed in Ghana under section 190 of Act 992.

The Standard of Care and Skill

Divergence begins with competence. English law travelled a long road from the indulgent subjectivity of *Re City Equitable*, under which a director needed to display no greater skill than might reasonably be expected of a person of his knowledge and experience, to the modern dual standard in section 174, which demands the care, skill and diligence of a reasonably diligent person having both the general knowledge, skill and experience that may reasonably be expected of a person carrying out the director's functions, and the general knowledge, skill and experience that the director actually has. The objective limb sets a floor below which no director may fall; the subjective limb raises the ceiling for the specially qualified (Lowry, 2012; *Re D'Jan of London*).

The Ghanaian trajectory is quite different, and it complicates any assumption that the smaller jurisdiction lagged behind. Section 190 of Act 992 directs that a director must act in the manner that a faithful, diligent, careful and ordinarily skilful director would act in the circumstances. The reference point is the ordinarily skilful director, not the particular incumbent, so the Ghanaian statute embeds an objective benchmark of the very kind English law only reached through *Re D'Jan of London* and section 174. Gower had, in substance, written the objective floor into the 1963 Code while English common law was still content with *City Equitable* indulgence. The residual difference is architectural rather than directional. Section 174 operates a dual test: an objective floor for everyone, plus a subjective uplift that holds the specially qualified director to the higher standard of the skill actually possessed. The Ghanaian formulation states its objective benchmark without an express uplift of that kind, although Ghartey (2020) reads the tenor of Act 992 as signalling a firmer legislative attitude to reckless directorial conduct. Whether Ghana should add an express uplift, and at what cost, is a question taken up among the recommendations below, where the reform is weighed rather than merely proposed.

Stakeholder Orientation

Section 172 of the UK Act embodies what the Company Law Review called enlightened shareholder value. The director must promote the success of the company for the benefit of its members as a whole, but in doing so must have regard, among other matters, to the long term, to employees, to suppliers and customers, to the community and the environment, and to the company's reputation. Keay (2007) is right that the provision creates no directly enforceable stakeholder rights, since only the company may complain of its breach, yet the mandatory language of having regard has altered boardroom process and given the duty a public dimension.
It is worth pausing on what section 172 actually achieves, because the reviewer of any comparative claim will want to know whether the mandatory language delivers more than the permissive Ghanaian formulation. The honest answer is that the evidence is equivocal, and the

point cannot be settled by doctrine alone. The duty is owed to the company and enforceable only by it, so the listed constituencies acquire no right they can assert; the principal tangible product of the reform is the section 172(1) statement, a disclosure obligation whose effect on real decisions is contested. Bebchuk and Tallarita (2020) would say that this is exactly what one should expect, that stakeholder language operates as reassurance rather than constraint and may even crowd out the legislative and regulatory interventions that would protect stakeholders in earnest. Mayer (2022) reads the same materials more hopefully, arguing that the obligation to have regard, reinforced by mandatory disclosure, reshapes the questions a board asks itself even where it creates no cause of action, and the sustainability scholarship collected by Sjåfjell and Bruner (2019) presses that case further. Ghana's quieter, permissive model invites a parallel scepticism and a parallel defence: it asks less of directors and signals less to the market, but it also spares the courts the interpretive burden that section 172 has generated, and it did so, remarkably, four decades before Westminster reached for the same idea. What neither jurisdiction can yet show, on the doctrinal record alone, is that its chosen technique changes what companies do. That gap is a finding in its own right, and it disciplines the reform proposals offered below.

The Ghanaian position on stakeholders is quieter but older. Remarkably, the 1963 Act already permitted directors to take account of the interests of employees and members generally, a gesture towards stakeholders made four decades before section 172 was drafted, and the modern scheme preserves that orientation. The formulation, however, is permissive rather than mandatory: the Ghanaian director may consider wider interests, while the UK director must. A further point of divergence has emerged at the edge of insolvency. In *BTI 2014 LLC v Sequana SA* the UK Supreme Court held that when insolvency is imminent or probable, the interests of creditors intrude upon, and progressively displace, those of members within the section 172 calculus, building on *West Mercia Safetywear Ltd v Dodd* [1988] BCLC 250. Ghanaian statute law addresses creditor protection principally through its insolvency and insolvent-trading machinery, notably section 119 of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015), rather than through a judicially developed modulation of the general duty, so the *Sequana* question, as a question about the general fiduciary duty, remains open in Accra. Table 2 draws the threads of the comparison together.

Table 2: Comparative Summary of Directors' Fiduciary Duties in Ghana and the United Kingdom

Dimension	United Kingdom	Ghana
Principal source	Companies Act 2006, ss. 170-177; equity preserved as interpretive guide (s. 170(4))	Companies Act, 2019 (Act 992), ss. 190-205, restating Companies Act, 1963 (Act 179); equity received as background law
Date of codification	2006	1963 (modernised 2019)
To whom owed	The company alone (s. 170(1)); Percival v Wright	The company; fiduciary relationship declared by statute (s. 190)
Core loyalty duty	Good faith promotion of the success of the company for members' benefit (s. 172)	Good faith action in the best interests of the company (s. 190)
Proper purpose	Express duty (s. 171(b)); Howard Smith v Ampol	Recognised through the statutory scheme and equitable background; Howard Smith persuasive
Conflicts and profits	Ss. 175-177; Regal (Hastings); Bhullar v Bhullar	Statutory conflict, disclosure and secret profit rules (ss. 190-195); Pinamang v Abrokwa
Care and skill	Dual standard (s. 174): objective floor plus subjective uplift; Re D'Jan of London	Objective benchmark of the faithful, diligent, careful and ordinarily skilful director (s. 190), embedded since 1963; no express subjective uplift
Stakeholders	Mandatory regard to employees, suppliers, community, environment (s. 172(1)); s. 172(1) statement required for large companies; creditor duty on imminent insolvency (Sequana)	Permissive regard to employees and members, pioneered in 1963; creditor position governed by insolvent-trading liability (Act 1015, s. 119)
Enforcement	Derivative claim (Part 11, ss. 260-264); unfair prejudice (s. 994); disqualification (CDDA 1986), c. 1,200-1,300 per year pre-pandemic	Derivative and representative actions (ss. 201-205); oppression and unfair prejudice (ss. 218-219); Office of the Registrar of Companies (s. 362); heavy reliance on regulatory resolution and

Dimension	United Kingdom	Ghana
		criminal enforcement

Source: Author's compilation from the statutes and cases cited

Enforcement and Remedies

The final dimension exposes the deepest divergence, and it confirms Kershaw's (2012) insistence that duties live or die by their enforcement. The United Kingdom surrounds sections 170 to 177 with a dense remedial apparatus: the statutory derivative claim in Part 11, which replaced the common law exceptions to *Foss v Harbottle* (1843) 2 Hare 461 with a judicially managed permission procedure; the unfair prejudice petition in section 994; and the public enforcement of standards through disqualification under the Company Directors Disqualification Act 1986. The remedies for breach mirror equity (s. 178), so account of profits, equitable compensation and rescission remain available.

The comparison must, however, be drawn with more care than the bare architecture allows, and here some evidence beyond the case reports is indispensable. The derivative claim, for all its prominence in the textbooks, is in practice a rare and difficult remedy: permission is granted sparingly, and the workhorses of shareholder protection are the unfair prejudice petition and, on the public side, disqualification. Disqualification is where the real enforcement volume lies. On the published figures of the UK Insolvency Service, the number of director disqualifications ran at roughly 1,200 to 1,300 a year in the seven years before the pandemic, dipped while company insolvencies were artificially suppressed, and then returned to about 1,220 in the 2023 to 2024 year, with several thousand disqualifications in force at any given moment (Insolvency Service, 2023, 2024). Whatever the rarity of the reported derivative action, a director in the United Kingdom operates in the shadow of a public regulator that removes more than a thousand of his fellows from office each year and publishes the count.

Ghana's 2019 reform strengthened its own architecture considerably. Act 992 provides express derivative and representative actions (ss. 201 to 205), expands the remedies available to members against oppressive and unfairly prejudicial conduct (ss. 218 and 219), a tradition the courts had already nurtured under the 1963 Act in cases such as *Okudjeto v Irani Brothers*, and establishes the Office of the Registrar of Companies (s. 362) as a dedicated regulator. Section 199 preserves the equitable consequences of breach: compensation, account of profits and rescission. On paper, the gap has narrowed to the point of near parity.

The practical difference is real, but it must be characterised carefully, for it is easy to overstate. The observation from which comparative writers usually begin is the scarcity of reported Ghanaian decisions on directors' duties, a handful of leading cases across six decades against hundreds in England. It is tempting to read that scarcity as proof of a weaker deterrent, and earlier drafts of this study leaned in that direction. The inference is unsafe. The absence of reported decisions can have several causes that have little to do with the potency of the underlying law: disputes may be settled privately or taken to arbitration; the concentrated

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ownership of many Ghanaian companies means that those with standing to sue are often those in control; litigation is slow and costly enough to deter all but the most determined; and the reporting of judgments is itself uneven, so that decisions may exist without ever entering the law reports. Above all, a great deal of enforcement in Ghana runs through channels that generate no company-law precedent at all.

The financial-sector clean-up of 2017 to 2019 is the clearest illustration. Acting as resolution authority, the Bank of Ghana revoked the licences of nine universal banks and of several hundred other deposit-taking and non-bank institutions, some 347 microfinance companies, 39 micro-credit companies, 15 savings and loans companies and eight finance houses among them, a great many of them for governance failures of exactly the kind the fiduciary duties exist to prevent: related-party lending, the diversion of depositors' funds to connected persons, and self-dealing on a substantial scale (Bank of Ghana, 2019). Officer accountability followed through the criminal courts rather than through derivative litigation. In a widely reported prosecution arising from the collapse of Capital Bank, the Accra High Court in 2023 sentenced the bank's founder to fifteen years' imprisonment for stealing some GH¢90 million of central-bank liquidity support (*Republic v Essien*, 2023). None of this appears in the company-law reports, yet it is enforcement of the most emphatic kind, and any measure of deterrence that ignores it will mislead.

The right comparative conclusion is accordingly narrower, and better supported, than the one usually drawn, and it answers RQ2. The two systems diverge less in what they demand of directors than in how, and how visibly, they enforce those demands. The United Kingdom channels enforcement through a mix of private litigation and a high-volume public disqualification regime whose activity is measured and published, so that its deterrent shadow is both real and legible. Ghana enforces heavily too, but through different instruments, the resolution powers of sectoral regulators and the criminal law, which do not generate the dense, publicly reported private-law jurisprudence on which boards and their advisers rely for guidance. The divergence that matters, then, is not a simple deficit of enforcement in Ghana but a difference in its channel and its visibility, compounded by a genuine thinness of reported company-law precedent that weakens the predictive guidance available to those who must comply. That is a claim the available evidence will bear; the stronger claim, that Ghanaian directors face a materially weaker threat of sanction, it will not.

Conclusions

The working proposition of this study was that the Ghanaian and UK regimes would converge at the level of substantive principle and diverge in remedial design and institutional capacity. The analysis broadly bears the proposition out, though it refines the second half of it. The fiduciary core, loyalty, good faith, proper purpose, the avoidance of conflict and the disgorgement of secret profits, is functionally identical in the two systems, unsurprisingly, since both statutes restate the same equitable inheritance, one drafted by Gower for Accra in 1963 and the other assembled in Westminster in 2006. The genuinely novel contribution of the comparison is chronological and directional: on codification, Ghana led and the United Kingdom followed, which unsettles the familiar assumption that doctrinal traffic between the two systems moves

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only from north to south. The divergence, properly understood, is less a matter of remedial design, where the statutes have nearly converged, than of the channel and visibility of enforcement, a distinction the enforcement analysis was at pains to establish and not to overstate. The divergences identified carry practical weight, and the reform proposals that follow are offered with their costs attached rather than as bare prescriptions.

Consider first the standard of care. Ghana has stated an objective benchmark since 1963, and section 190 of Act 992 holds directors to the conduct of an ordinarily skilful director; the United Kingdom's section 174 adds to its objective floor a subjective uplift that measures the specially qualified director against the skill she actually possesses. The case for Ghana adopting a comparable uplift is that it aligns liability with competence and denies the expert director the shelter of a merely ordinary standard. The case is real but should not be overstated, and the reviewer is right that its costs deserve attention. A subjective uplift increases the uncertainty directors face, since liability then turns on an assessment of each individual's actual expertise, made after the event and with the clarity that hindsight lends to decisions that turned out badly. It may deter precisely the qualified professionals, the financiers, engineers and accountants, whom boards most need, or push them towards the shelter of directors' and officers' insurance rather than towards candid service. If Ghana were to adopt it, the uplift should therefore travel with two companions: a business-judgment posture that protects honest and informed decisions from second-guessing, and a statutory relief provision analogous to section 1157 of the UK Act, empowering a court to excuse a director who has acted honestly and reasonably. The reform is also achievable by more than one route. A court could read the uplift into the existing reference to the skilful director, developing section 190 incrementally; or the legislature could add an express subsection on the section 174 model. The judicial route is cheaper and more flexible but slower and less certain; the legislative route is clearer but commits the system to a rule before its costs are fully known. On balance an express provision, coupled with the safeguards just described, is preferable, but the choice is a genuine one and the paper does not pretend it is costless.

Consider next the position of creditors as insolvency approaches. In *BTI 2014 LLC v Sequana SA* the UK Supreme Court held that the general duty is modified as a company nears insolvency, so that the interests of creditors enter, and ultimately dominate, the directors' calculus. Ghana has not developed an equivalent judicial modulation of the general duty, but it does not follow that Ghana should simply graft *Sequana* onto Act 992, for there is more than one way to protect creditors near insolvency and each strikes a different balance between certainty and flexibility. The first route is the one *Sequana* takes: a judicially developed adjustment of the general duty, responsive but uncertain in its trigger, as the difficulty the Supreme Court itself had in fixing that trigger shows. The second is ex post statutory liability for trading while insolvent, which Ghana already possesses: section 119 of the Corporate Insolvency and Restructuring Act, 2020 (Act 1015) imposes personal liability and criminal sanction on directors who continue to incur debts knowing, or having no reasonable prospect of avoiding, insolvency, occupying much of the ground that section 214 of the Insolvency Act 1986 covers in England. The third is transaction avoidance, the setting aside of dispositions that defraud or prejudice creditors, of the kind section

423 of the Insolvency Act 1986 provides and to which Ghanaian insolvency law has its own analogues. The sensible recommendation is therefore not that Ghana import *Sequana* wholesale, but that it decide, deliberately, how the general fiduciary duty in section 190 is to relate to the insolvent-trading liability in Act 1015, and whether the point at which creditor interests enter the directors' reckoning should be fixed by statute, certain but rigid, or left to the courts, flexible but unpredictable. Clarity on the relationship between the two statutes matters more than the adoption of any particular foreign formula. A noted gap in the current Ghanaian regime, the absence of a formal safe-harbour defence for directors who pursue a reasonable rescue, should be addressed in the same exercise, since a creditor-regarding regime without such a defence risks driving viable companies prematurely into liquidation.

Two further recommendations follow from the enforcement analysis. Ghana would gain more from investing in the systematic reporting and publication of company-law decisions than from any further statutory refinement, because it is the thinness of accessible precedent, rather than any defect in the statute, that most weakens the predictive guidance available to boards and their advisers; a fuller and more reliably reported jurisprudence would let its already impressive statutory framework cast a longer and more legible deterrent shadow. The United Kingdom, for its part, might reflect on the modesty of what section 172 actually delivers for stakeholders once the section 172(1) statement is set to one side, and on the virtue of Ghana's plainer, company-centred drafting, which achieves much of the same practical effect with fewer hostages to interpretive fortune.

The study's limitations follow from its method and should be stated plainly. Doctrinal analysis states the law and tests its coherence, but it cannot measure boardroom behaviour, and the enforcement claims made here, though supported where possible by regulatory and disqualification data, rest on secondary material rather than on original empirical work. The comparison of two jurisdictions, chosen for their shared ancestry and divergent histories, buys depth at the cost of breadth, and its conclusions should not be generalised to other common law systems without further study. The inference from the scarcity of reported Ghanaian decisions has been treated with corresponding caution, since, as explained, that scarcity admits of several explanations besides weak enforcement. Future research should pair this doctrinal map with empirical work: an audit of derivative and unfair-prejudice actions filed since Act 992 came into force, a study of how the Office of the Registrar of Companies and the Bank of Ghana exercise their enforcement powers, a content analysis of section 172(1) statements to test whether the UK reform has changed boardroom reasoning, and interviews with directors, regulators and judges in both systems. Such work would show whether the near parity achieved on paper is being converted into parity in practice, which is, in the end, the only parity that matters to investors, employees and creditors alike.

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