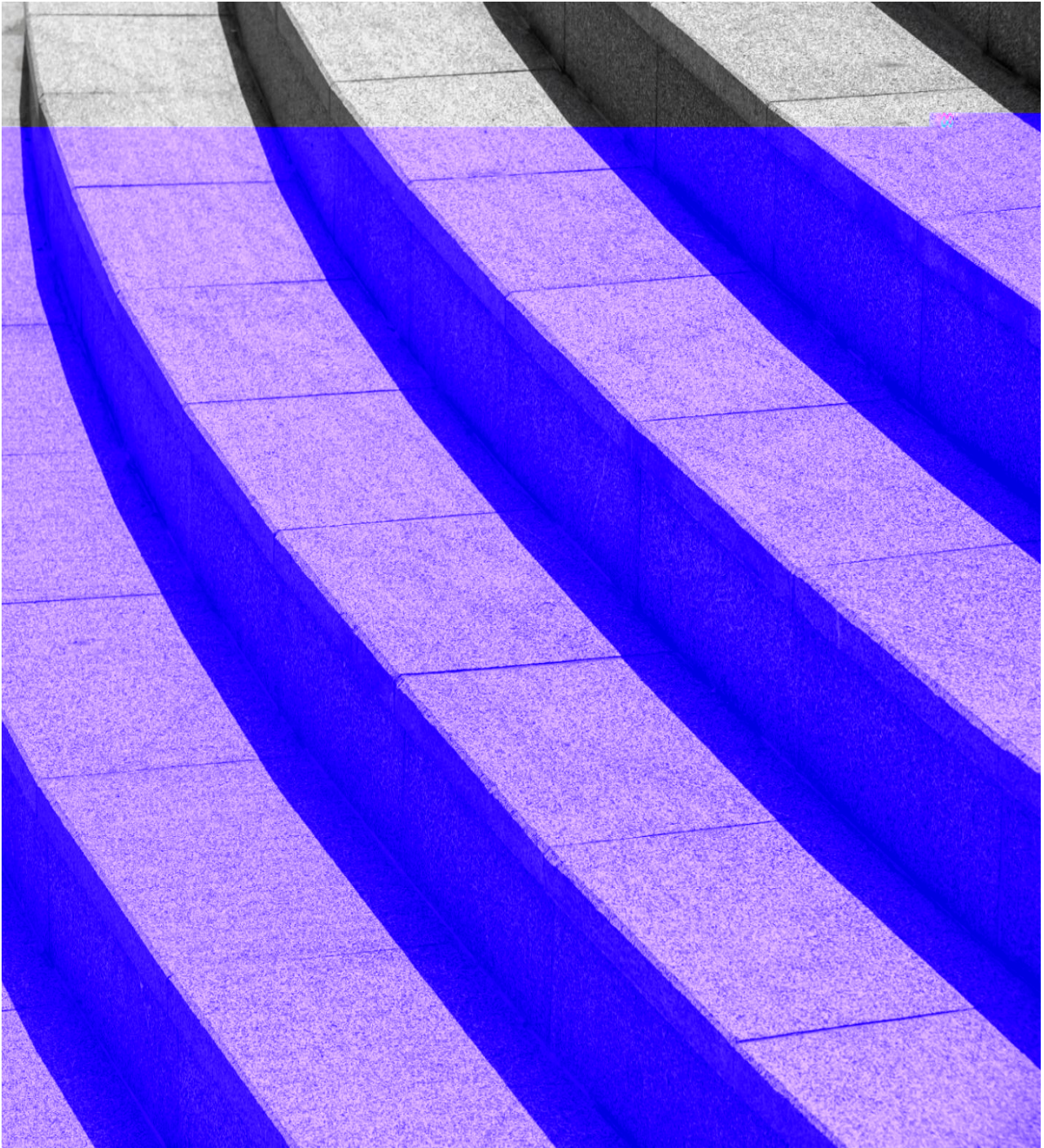


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## The Trials and Tribulations of dealing with shareholder activism – not for the faint hearted



Hoggett Bowers was delighted to host our first Board lunch of 2022. The lunch was well attended by Chairs, NEDs and CEOs from across Energy, Utilities, Infrastructure, Transport, Financial Services and Consumer sectors.

**We held a discussion on ‘The trials and tribulations of dealing with activist investors’ from a CEO’s perspective and some of the key take aways includes:**

**Dealing with the activist investors over a long period, what can a CEO do to mitigate the pressure?**

A CEO must have a pragmatic mindset which means dealing with activist questioning and narrative in a sensible, matter of fact and realistic manner. Whilst naturally a prolonged tirade does take its toll, however the support of family, friends, the Board and the Chair are important to keep the CEO focused but not overwhelmed.

**Activists, are they a catalyst for good or a nightmare for the CEO?**

Yes and no. On one hand the activists can act as the litmus paper in testing your organisation’s resolve and resilience allowing for refinement of the strategy. However, if it is a prolonged attack then definitely it can become a relentless task especially when countless, unfounded allegations are involved and need an appropriate response.

Activists can be positive catalyst for good in qualifying the corporate strategy and associated messaging. For example, sharpening the narrative around ESG, particularly with key stakeholder groups, is useful.

**Why is messaging important?**

It is critical to quickly understand the ‘noise’ being made by the activists. Equally, it is important to be proactive in getting the messaging from the business out quickly, particularly in terms of early engagement with key institutional stakeholders. Using independent stakeholders and advisors early to gain their perspective in the formulation of a robust response to the activists' narrative is also critical.

It is useful to compartmentalise activists’ commentary and respond to each point with proven facts and data to keep the initiative. It was also stressed the importance of ensuring the Board are continually briefed, aligned and on message. Also, don’t assume that all major shareholders will react rationally – understand their perspective also and always support responses with validated independent views.

**How to nurture corporate reputation during this time?**

The importance of doing as much research as you can about the activists and not to automatically rely on your existing banking advisors. Using a wider network of specialists to understand more about the shareholder activist’s mandate and gain a perspective on their modus operandi.

It is critical not to deviate from the strategy agreed with the Board and sending a message to the activist shareholder – “if you do not like this, then sell your shares”.

## Experienced gained and lessons learnt:

### 1. Engage with activists early.

Once an activist is identified on the register it is critical to meet with them and understand their perspective. Citing that activists rarely come straight out with a white paper, it is important to get your position across, particularly when it comes to strategic direction and priorities.

The activists' position is typically around confirming their own thesis and building their argument against your position. Your team will need to identify the key weaknesses in your own strategy to ensure they you are ready to rebut arguments.

### 2. Do not underestimate the time and energy required to deal with activist shareholders.

You need to have dedicated resource looking at their plans, shareholders, proxy agents etc. Try and protect the day-to-day operations and have regular interaction with the activists, treat it like a possible takeover.

### 3. Get an external view of your Board's qualifications.

Ask the Board if there are any skeletons in the closet. Activist may 'spin facts' and plant associated governance doubts as it suits them. Ensure the board's bios are precise and validated. Headhunters also need to undertake more extensive due diligence checks on prospective board members.

### 4. Keep close to your board.

Some NEDs will feel very exposed about being under the spotlight and worried about their own reputation. Also, remind them of the agreed strategy and offer them options - you don't want to be second guessed.

### 5. Remember that you are there to serve the shareholders.

It's not just all about the activist and don't let them dominate your thinking. Overall, your primary aim is to deliver value for all shareholders and meet your forecasts.

#### Acknowledgements:

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Mike McKeon	Chair Audit Committee	National Express
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Nick Allan	CEO	Control Risks
Paul Forman	CEO	Essentra
Sarah Vawda	NED	Access Intelligence plc

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