

## Fast fashion—the environmental impact

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**Environment analysis:** Fashion is an industry that has had repeated calls to change the way it operates for the sake of the environment. As part of a series exploring legal issues of ‘fast fashion’, John Buttanshaw, senior associate at Travers Smith LLP and Emily Dorotheou, associate at Mishcon de Reya LLP, consider the environmental and social impact that fast fashion has as well as the Environmental Audit Committee’s report into clothing consumption and sustainability and modern slavery.

### ‘Fast fashion’—what is it?

Buttanshaw and Dorotheou both agree that the key components of fast fashion are:

- a quick manufacturing process
- a flexible production that allows manufacturers to quickly increase production if items are selling well
- low cost

Buttanshaw adds that: ‘Garments are aimed at consumers who want to change their wardrobe on a regular, trend driven, basis but are budget conscious. It has been argued that this combination of low-price points, focus on short term trends and the speed of production results in garments which are of low durability and not intended to last.’

This point has been argued strongly in the Environmental Audit Committee’s [report](#), ‘Fast fashion: clothing consumption and sustainability’, which states that ‘the way we make, use and throwaway our clothes is unsustainable.’ See further: [LNB News 19/02/2019 107](#)

Dorotheou notes how long this has been going on as well as some examples of retailers: ‘This practice started in the 1980s and has since become a very popular part of the UK’s retail industry.’

### Impacts and issues

When looking into the background of this inquiry, the outcome seems like it was inevitable the spotlight would eventually be shined onto fast fashion.

Dorotheou says that the ‘UK’s love of fashion has resulted in an increasing demand for clothes’ and therefore retailers produce ‘more products to meet demand’. However as this has gone on Buttanshaw says that there has been ‘a growing public consciousness of the potential adverse impacts of consumerism and a ‘throw-away’ culture.’

The Committee’s report is filled with various facts:

- the UK buys more clothes per person than any other country in Europe.
- 300,000 tonnes of textile waste ends up in household black bins every year.
- less than 1% of material used to produce clothing is recycled into new clothing at the end of its life.

There are countless examples with the Committee claiming that ‘fashion shouldn’t cost the earth—but the fashion industry has marked its own homework for too long.’ According to the report, this has come about due to the risk of being caught cutting corners being low.

These facts are why Buttanshaw says that ‘there has been a feeling that fashion is the logical next area for scrutiny, and a series of recent papers (including an influential [report](#) by the Ellen MacArthur foundation in 2017, ‘A new textiles economy: Redesigning fashion’s future’) have been highlighting challenges in the sector.’

Buttanshaw also lists the key impacts associated with fast fashion:

- carbon—the greenhouse emissions currently associated with producing and distributing clothing have been estimated to be greater than international flights and shipping combined

- waste—recycling rates in the industry are low, leading to huge volumes of clothing going to landfill
- water and land usage—particularly high for grown fibres. For example, by some estimates, one kilogram of cotton can take up to 20,000 litres of water to produce
- water pollution—the Ellen MacArthur Foundation estimated that 20% of industrial water pollution can be attributed to textiles (for example, discharge of dyes). Synthetic fabrics also shed plastic microfibrils when washed. A recent [study](#) by the University of Plymouth found that each cycle of a washing machine could release over 700,000 plastic fibres into the environment
- social—poor working conditions, including safety risks, poor pay and long hours in circumstances which amount to servitude, and child labour, are considered endemic within industry supply chains. This is an issue not only for production facilities abroad, but also the UK—with numerous instances of pay below minimum wage being reported in the emerging textiles manufacturing hub in Leicester, for example

These issues are seconded by Dorotheou: ‘Large amounts of waste pollution which are produced during manufacturing processes, a severe strain on natural resources to support the growth of cotton, labour exploitation and unsafe working conditions that are common along the supply chain, the great difficulty in disposing of waste clothing or unsold stock, with around 300,000 tonnes of clothing sent to landfills or incinerators every year. These issues are more pronounced within the fast fashion industry, given the large volumes of cheap, disposable clothing produced.’

## Recommendations

There are number of key recommendations that the Committee’s report makes:

- mandatory environmental targets for any fashion retailer whose turnover is above £36m
- an Extended Producer Responsibility (EPR) scheme to reduce textile waste that should reward companies that design products with lower environmental impacts and penalise those that do not. It suggests the introduction of a 1p charge for every item of clothing produced
- the tax system should be used to shift the balance of incentives in favour of reuse, repair and recycling
- the government should reduce VAT on repair services as Sweden has done
- lessons on designing, creating, mending and repairing clothes should be introduced into the school curriculum

Buttanshaw also lists a key recommendation as: ‘Publish a publicly accessible list of retailers required to release a modern slavery statement under the [Modern Slavery Act 2015 \(MSA 2015\)](#) and increase penalties for those companies who fail to comply. Supply chain due diligence should be made mandatory under [MSA 2015](#), and company reporting obligations in annual reports strengthened to specifically include slavery issues.’

Dorotheou scrutinises these: ‘The Committee’s recommendations unfortunately feature very few immediate and practical steps for brands to implement to improve their environmental impact. There are numerous requests for the government to legislate, undertake further research or provide funding for regulatory bodies, all of which are unlikely to be acted upon in the short term. As climate change is such a critical issue, reliance on government action and the lack of practical recommendations is disappointing.’

Buttanshaw echoes that these ‘may not be as radical as they first seem’: ‘Nevertheless, the importance of the Committee Report is perhaps not the specific content of its proposals (none of which, individually, may be ground-breaking). Rather it is its consolidation of so many different strands of the environmental and social challenges posed by the industry into a single and pointedly urgent call for action. It will be interesting to see how government responds.’

## Challenges

Due to these recommendations being ‘disappointing’, the legal and regulatory challenges faced may well be all the more pronounced.

Dorotheou notes that these challenges may affect companies that want to do business in the UK: ‘While legislation may be required to drive good behaviour, the government will need to be mindful of not rendering those companies, which do comply with their sustainability requirements, at a competitive disadvantage to their competitors. The fashion

industry is big business in the UK (worth £32bn to the UK economy in 2017) and so any changes to improve sustainability will need to avoid the UK becoming an undesirable place to do business.'

Buttanshaw states the challenges may well be threefold—process, product and supply: 'In terms of process, the report focuses on reducing the environmental and social impact of production—tackling issues such as slavery and pollution. An obvious challenge here is that a lot of production is outsourced overseas and not directly subject to UK regulation (and local law requirements may be considered insufficient by UK standards, or may not be enforced).

'In terms of product, the report suggests changes are needed to garments so that they are easier to recycle/repair, and micro plastic shedding reduced. To date, efforts in this area have been based on voluntary business initiatives. Translating this into regulatory requirements will be challenging and can create economic tensions.'

'This can be seen from experiences in the field of electrical appliances—while there has been some success in ensuring more energy-efficient products are placed on the EU market and that consumers are more informed in this respect, efforts to encourage designs which allow for durability, reparability, upgradeability and design for disassembly have been much more difficult to legislate for. Hence the Committee Report refers vaguely to the need to incentivise progress in this area but is less clear on any associated regulatory reform.'

'EPR schemes have had some success in other fields but they can be relatively complex to implement, including how to define which person(s) should be responsible in a complex distribution supply chain, setting qualification thresholds etc. We have also found enforcement and compliance with those regimes to be patchy. Moreover, it is questionable how meaningful an impact this will have given the difficulties there is in recycling in the industry.'

## Developing the law

Changes to the law in this area are on the horizon. For the government to really combat this, the Committee suggests that the way certain products are manufactured may need to change.

Dorotheou discusses how this may affect washing machine manufacturers: 'The Committee made the interesting suggestion of collaboration between retailers, water companies and washing machine manufacturers to investigate further the problem of microfibre pollution. Once we know more about microfibre pollution, a potential change could be to oblige washing machine manufacturers to have an appropriate filter in machines to minimise this.'

Buttanshaw focuses on the changes to law that may be brought about from labour exploitation reform: 'Interestingly, in terms of labour exploitation reform, the Committee report referred to the recently published 'Labour Market Enforcement Strategy' (from the Director of Labour Market Enforcement). This called for relevant labour legislation to be amended so that those at the top of the supply chain (e.g. a fashion retailer) are legally responsible for labour exploitation breaches further down the supply chain (e.g. by a contracted manufacturer).'

'This would effectively create a 'failure to prevent' type offence, similar to that seen in the anti-bribery and anti-tax evasion fields (and which government has been considering extending to other economic crimes), blurring the lines of corporate legal responsibility. Industry would be sure to object to the prospect of being liable for persons who they may arguably have more limited control and visibility over.'

## Changing the public opinion

This is an extremely important step of the process of reducing the harm that fast fashion can do. The UK buys more clothes per person than any other country in Europe. The Committee report states that 17% of young people said that they would not wear an outfit again if it had been on Instagram. Consumers are also more like to buy new clothes rather than repair them. The call for changes to school curriculums may well be intended to help try and shift public opinion and both Dorotheou and Buttanshaw have touched on how fast fashion has grown through public demand and consumption.

Buttanshaw adds to this that 'there needs to be a shift from a throwaway culture to one focused on sustainability and longevity' and that 'government may also be able to support, through fiscal incentives but potentially also through funding and other forms of support, businesses which are focused on renting, repair and recycling of clothes in a more circular model.

Dorotheou supports this shift: ‘Consumers’ perception of clothes needs to change, so that clothes are not seen as single use and disposable items.’ However, Dorotheou also believes that ‘there needs to be a generally accepted and objective definition of ‘sustainable’ and what is needed to fulfil this definition.’

## Next steps

The environment is a topic that can be controversial and fiercely debated by many. Regardless, it is a topic that will continue to be divisive and talked about as governments and bodies move to support or reject various recommendations and changes. The Committee’s report is now in the hands of the government and it will be interesting to see what the next steps that come out of it are. This sentiment is echoed by both Dorotheou and Buttanshaw, to use Buttanshaw’s wording: ‘Many of the report’s recommendations are already under consideration in some form, and so it seems likely that the government will simply reaffirm this, and state that it will continue to consult and review reforms in the area.’

In the short term, Dorotheou identifies increased public awareness as the next likely step: ‘More initiatives to increase public awareness and appreciation of the true environmental cost of our love of fashion are welcomed, as this will help to encourage better brand behaviour.’

Buttanshaw believes the short term will focus on the potential introduction of higher consequences: ‘Potential changes in law to introduce offences for ‘failing to prevent’ breaches in the supply chain is an area to watch in the short term. Otherwise further meaningful change may require greater technical/industry consensus on solutions to recycling of fibres etc. Efforts in these areas may therefore need to be the focus.’

When considering the short term however, we must be careful to remember the current situation the UK is in, as highlighted by Dorotheou who states that ‘hopefully this will not get lost among the current Brexit efforts, given the substantial investigation undertaken by the Committee to investigate this area.’

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