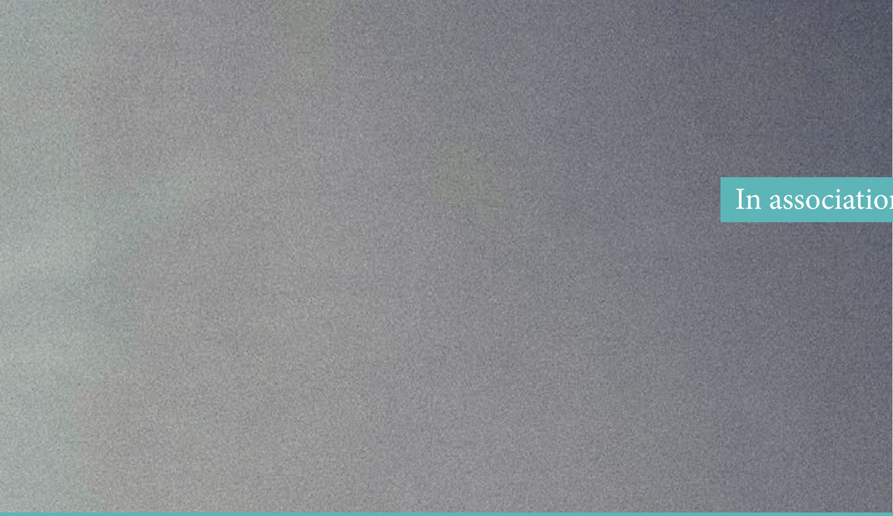



# The greater good

**Should the task of promoting a strong corporate culture be the purview of general counsel? We gathered a clutch of senior in-house specialists to debate the issue with Clifford Chance**

Mark McAteer

**Hannah Hullah, John Lewis Partnership**

**Matthew Scully, Clifford Chance:** There are two things that I wanted to touch on: first, whether there is such a thing as a good culture – I would say there is no one good corporate culture for all businesses but there are perhaps some basic common features - and, second, the notion of 'tone from the top', which is very important but it is not enough because culture has to be embedded. Why are we discussing it around the table here as a bunch of lawyers? We can inject quite a bit of common sense and pragmatism into the debate and to help people understand that the difference between right and wrong is not just what is legal and not legal – sometimes there is something that is legal but is a really bad thing for the business to be doing.

***Mark McAteer, The In-House Lawyer: Is there such a thing as a good corporate culture?***

**Stephen Lerner, Three:** Corporate culture is not about what is right or wrong legally. It is a unifying view as to what your company stands for and what employees get behind. If they believe in what you stand for, that engenders trust and that trust will then lead to a positive environment where risks will be escalated and people will feel confident in reporting. If you do not have that trust culture, you have bigger problems than just legal compliance and having your company fall in line with your appetite for risk. Those are all things that are in the purview of general counsel generally but they do not drive corporate culture.

***Mark McAteer: Are we talking about the role of the GC as a gatekeeper of corporate values?***

**David Eveleigh, Serco:** You cannot just have the GC as being the go-to person for working out whether culture is good or bad or

indifferent. It is definitely not a legal issue. You cannot impose culture by way of regulation or law. People have tried and not necessarily been successful. They are starting to get it a little bit now with things like s172 [of the Companies Act] but, if you look at what is coming out around the culture of a company through ESG [environmental, social and corporate governance], it is all coming from a very different driver than the law and regulation. Therefore, if it is placed at the GC's door, you are going down the wrong route because, if you are just handling it as a legal issue, you are not going to get to the culture of the business.

**Roger Leese, Clifford Chance:** It is interesting now that there is this move to try to increase the relevance of s172 through this new mechanism, which seems to be the way in which this government, at least, thinks that you can bring in good practice, by forcing transparency through reporting. This is where the issue comes in. As the lawyer what I see as the legal risk, for instance, is the gap between what a company reports and what is actually happening or what happens in the future.

**Chinwe Odimba-Chapman, Clifford Chance:** Is there a risk that companies that have too strong a purpose and direction do not create the right culture for employees and stakeholders if people who do not necessarily agree with that purpose and structure feel that they cannot speak up?

**Matt Wilson, Uber:** We used to have 14 cultural values at one stage, which is a few too many. There are now seven and they are very different. Some of those older cultural values included 'principled confrontation' and 'toe-stepping'. Toe-stepping was meant to be this cultural value where you could challenge anyone else but essentially it was weaponised and used as an excuse to be a bit of an arse. People said, 'I am just toe-stepping'. 'No, you are not. You are clearly being a bit of an arse.'

I became really interested in our corporate culture as a GC, and like to think I have played some small part in helping to influence it positively over the last few years with the rest of the leadership. It absolutely means complying with all of those technical things, whether it is equal pay or tackling modern slavery, but having the right culture also means lowering the risk for the business generally so you will have fewer problems as you go forward. It will lead to the business making the right decisions and being, as Stephen mentioned, an inclusive workplace where people are able to challenge power or authority or what they see as a hierarchy.

**Stephen Lerner:** I do not think it is a question of having too strong a culture; it is having the right culture because, essentially, you want to have high levels of employee engagement. That is how you have high-performing companies that are aligned around a unified purpose. If you do not have the right people at the top, it has such a disproportionate influence on everybody else in your organisation. General counsel broadly have a huge influence on the organisation. If we are not aligned to that way of thinking and we act as the policemen of the business, we are not going to have the influence we need.

***Mark McAteer: Is culture also linked to the business cycle? You may have the best-intentioned CEO in the world but if you are not turning profit, the messaging from the top changes.***

**David Eveleigh:** Is it sustainable to have a culture that adapts to where you are in the market? I would worry a little bit because I have been in a company that has been through quite a cycle. I came in at the bottom part of it and there were issues. Did that drive the right kind of behaviours? While certain things might be very important to one of the stakeholders – the shareholders – long term they may not be sustainable and it can lead to some poor behaviour. It needs strong governance if that is a driver but the governance is really just a defence mechanism for a culture and, if the culture is not right, that is quite challenging.

> **When a business is not going so well a GC can really push home the message that it is not business at any cost.**
> **Kate Danson, Johnson Matthey**

**Matt Wilson:** We have heard about cyclical businesses and I can recognise some of that but I know, from my experience, that if you do not fix things for the long term with some level of baseline or north star that people can come back to, it causes problems.

**Hannah Hullah, John Lewis Partnership:** The John Lewis Partnership has a very clear purpose, which revolves around being a better way of doing business and having a happy and motivated workforce that puts customers first. The challenge is how to provide clarity around how this is to be achieved. As a co-owned business that encourages empowerment of our partners by involving them in decision-making and how the business is run, this can have unintended consequences. There have to be boundaries and support so that partners can be genuinely empowered to deliver the Partnership's purpose. Tone from the top is key to setting these. As widely reported, we are restructuring the Partnership and embarking on a significant period of change bringing our two brands closer together, which is a big cultural shift. However this will, ultimately, ensure that we can continue to deliver against our purpose.

**Stephen Godsell, Guardian Media Group:** At *The Guardian*, we have an endowment fund, designed to support the long-term future of *The Guardian*, created out of the proceeds of previous disposals of non-core assets. The fund is committed to socially responsible investment and alignment with the values of our organisation. There is an increasing focus in the market on ESG investing – how investments can be made to generate long-term returns while still being in line with values and high ethical standards.

**Roger Leese:** There may be a couple of different strands to this. One of them is really about what we mean by culture to an extent. Cultures certainly ought to change and ought to mutate as you go in certain directions. If you are in a start-up, you need to be in the business of taking risks, whereas if you are an established business with thousands of employees, you are stable and you have a different culture. There is also the other part of culture, of course, that is about people doing the right thing and not breaking the rules and not creating risks for

## Participants

- Kate Danson, general counsel, group, Johnson Matthey
- David Eveleigh, group general counsel and company secretary, Serco
- Stephen Godsell, general counsel and company secretary, Guardian Media Group
- Nick Havers, chief counsel UK and Ireland, Marsh
- Rupert Hopley, group general counsel and company secretary, Informa
- Hanna Hullah, director – legal, John Lewis Partnership
- Stephen Lerner, general counsel and director of regulatory affairs, Three
- James Sullivan, VP legal, Monzo
- Matt Wilson, EMEA general counsel, Uber

- Roger Leese, partner, Clifford Chance
- Chinwe Odimba-Chapman, partner, Clifford Chance
- Matthew Scully, partner, Clifford Chance
- Mark McAteer, managing editor, *The In-House Lawyer*

> You have value statements and codes to help shape corporate culture but in my more recent experience, culture is very much shaped externally as well.
> **Nick Havers, Marsh**

the business, which ought to be a core that stays the same throughout the cycles.

***Mark McAteer: Isn't this about communicating the message that doing the right thing can also be profitable?***

**Kate Danson, Johnson Matthey:** That goes back to the point that, when times are tough, your culture goes downhill. When I think about culture, I often think about it being something much more long term. But when the rubber hits the road, what actually happens when a business goes through tough times?

**Matt Wilson:** Do you think part of the role of the GC is to provide some balance to that trade-off between short term and long term?

**Kate Danson:** Absolutely. Let us be clear that it is not just the responsibility of the GC alone, but one of the things that a GC can try to do when a business is not going so well is to really push home the message that it is not business at any cost and make sure this message is coming right from the top as well, because it is then that people are more likely to make rash decisions to push the envelope slightly further because they want to meet their targets.

**James Sullivan, Monzo:** Absolutely, and it is a dynamic thing. It is not static. As an early-stage company we're still on a path to profitability but we have a very strong focus on culture.

**Nick Havers, Marsh:** You have value statements and codes to help shape corporate culture but in my more recent experience, culture is very much shaped externally as well. Like many of the industries represented here, we are regulated. The regulator's gaze does inform our culture. We might like to present that it is what it is, but the regulator's lines of enquiry do permeate through and determine the way that we present ourselves on culture as well.

The other externality is M&A activity. We have just gone through a large transaction and there are perceived to be slightly different cultures in the two businesses, and that brings an opportunity through integration to change a little bit by taking the best of two slightly different cultures and blending them together.

**Chinwe Odimba-Chapman:** Rupert, you probably have had some recent experience of that as well.

**Rupert Hopley, Informa:** We have been very busy over the last four or five years. One of the biggest challenges is bringing together cultures that are often quite different.

I would point not just to the differences in cultures through M&A but differences in cultures around the globe. In US companies, the culture is very different around independent appointees on a board and their engagement. I believe our corporate governance is far stronger in terms of the independent directorships we have, ensuring that the NEDs are independent and that they do not stay on for too long. We then have the chair sitting in between the execs and the non-execs and keeping an eye on the CEO. Ultimately, we talk about the chair's role as being to take the CEO out, shoot them in the woods, bury the body and move on. That has to be the chair's primary role in terms of monitoring what the behavioural patterns are internally and making sure that the goals that have been set and agreed at board level are being delivered in the right way and in the right culture for the organisation so that it grows and goes beyond where it is at right now.

***Mark McAteer: Can you effectively measure that?***

**Nick Havers:** There is a fine balance. You have those measures, particularly in areas like whistleblowing incidents and customer complaints, for example. If you have none or you just have green RAG ratings, it may be too good to be true; and if you have too many red flags, you appear to have a bad culture. I am not trying to game the measurement but there can be this perspective, for example if there have not been any whistleblowing incidents in the last quarter. That may not be accurate or the right indicator. Is the whistleblowing line well publicised, for example?

***Mark McAteer: Chinwe, in your experience, do you find that the right information is filtering through when the in-house function does this kind of due diligence on people issues?***

**Chinwe Odimba-Chapman:** In most areas where GCs are asked to advise in relation to regulation, law, etc, the rules are fairly clear. You know what you have to do to keep on the right side of the line. The concern I have with this real focus by, in particular, the financial regulators on culture is that they find it very difficult to define what culture is. Therefore, how are you, as GCs, meant to go into your boardrooms or to your CEOs and say 'we are doing everything right'? David, you talked at the beginning about the tick-box approach of the regulator being, 'Do your s172 statement. Do your gender pay gap reporting. Make sure you choose one of three options for workforce engagement under the Corporate Governance Code.' You can do all of that and you can say to your board or your CEO, 'We are doing all of this stuff, we are doing everything,' and it does not matter. You can have your whistleblowing hotlines and you can have your employee surveys but you just need one thing to go wrong and the way that you deal with that wrong thing can make the regulator say, 'You do not have the right culture.'

**David Eveleigh:** If you are presenting to the board and that is the only time the board meet you, that is not ideal. If the people on your board, from the chairman through to the other non-execs, are not out in the business on a fairly regular basis, unchaperoned, it is very hard for them to get any sense of the business other than what you have told them.

**Rupert Hopley:** The important thing is also that they are not looking at the minutiae. With some of the issues that came out in your sector, it is great to talk to the person on the ground doing the day-to-day job but that is in the background to some of the contracts and obligations that people have signed up to. You often have the challenging culture in the sales environment because people going in and doing their day-to-day job probably do not care and do not understand the nuances of what is being written up or committed to by the company. That is where the risks arise,

> **The GC role is about executive management engagement. It is about influencing and being a voice at that table.**
> **Rupert Hopley, Informa**

and how you manage those parts of the culture are as important as the tone from the top.

When we were talking earlier about the influence or the role of the GC, your role there is about executive management engagement. It is not being the lawyer standing up and giving advice; it is actually about sitting in that room and influencing and being a voice at that table.

**Matthew Scully:** If that is not done then, you end up with situations where you have rotten apples inside the organisation. A lot of the things we have seen giving rise to massive investigation and litigation risk have come from situations where there is a nice message at the top and it is not just implemented properly because people within the organisation are incentivised to do things other than what senior management is telling them they should be doing.

***Mark McAteer: Sadly, we have whipped through our time. Thank you all very much for your contribution.*** ■