Governance + Compliance
Issue 1 | December/January 2025

Something in the [ai]r

Chatbots for board minutes **p44**

A CoSec AI maturity spectrum **p32**

Keeping an eye on the Budget **p8**

The magazine of the Chartered Governance Institute UK & Ireland

9 772051 265257 01
UK £8.99

Take no chances with change

If you spend any time on LinkedIn, you can't avoid clichés in your feed. But, sometimes, a cliché is better described as a 'truism'. 'Change is the only constant' might be worn out from overuse, but it's still a maxim to live by as we enter the second quarter of the 21st century. (And, yes, I'm counting 2000 as its first year – a controversial opinion from a brand new editor, I admit.)

'Change' is a feature of every edition of *Governance and Compliance*, of course. In this issue, we look at how a brand-new Government will alter the governance landscape; explore a couple of different dimensions of the ongoing change that artificial intelligence will bring; and ask how we can change relationships on boards – and between boards and their teams.

Some things do remain the same. The AI debate is a great example. The technology is shifting fast, and Big Tech has bet hundreds of billions of dollars on this being a revolution in how we handle data, analysis, creativity, and organisational processes. But governance professionals will rightly hold the line – on accountability, transparency, auditability and probity. The value of those things doesn't change – and the forces driving any revolution must be made to take account of them before we buy into it wholesale.

That doesn't mean we fight change. We just make sure to understand it, influence it, and offer reassurance to those affected by it. It's why bodies such as CGIUKI are so important: we see the change and offer essential context on it. That, too, is a constant.

Richard Young EDITOR
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Richard Young

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Deputy Secretary

London EC3/Hybrid

Our client is a leading insurance brokerage firm. The Group has approximately 16,000 teammates and 500+ locations worldwide. It now seeks to recruit a Deputy Secretary for its European division, reporting to the CLO/Group Company Secretary. You will be expected to provide support to group companies in the UK and Europe and worldwide. The role provides an excellent opportunity for an individual to join a company secretariat function in a fast growing and dynamic company, which is part of a larger global group. The role works closely with Legal, Compliance and Finance with a range of external providers including auditors and lawyers. The role will have significant exposure to senior teammates in the group. This role offers an excellent opportunity to demonstrate stakeholder skills, your team-working and organisational abilities, and to test your technical knowledge. It is a role with significant development opportunity for a motivated individual who is ready to take on a high degree of responsibility and has the drive and commitment to succeed. The purpose of the role is to deputise for the CLO/Group Company Secretary as required, to have delegated responsibility for Group boards/committees/subsidiaries and to act as line manager to the Trainee Company Secretary. The successful candidate is likely to be ACG/FCG with a minimum of five years' experience in a Secretariat (professional services useful).

3662

Part Time Governance Officer

London SW6

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Assistant Company Secretary -12month FTC

London EC3/Remote

This speciality insurance company is now seeking the support of a new team member at Assistant Company Secretary level. You'll ideally be CGI qualified or making good progress through your examinations. Whilst knowledge and experience of working in the insurance sector would be fantastic, its not a critical requirement of the role but a good, working knowledge within financial services is preferred. As this role will be offered at Assistant Company level, you'll also have opportunity to support the ongoing development of more junior team members. This company are ideally seeking someone who can join quite quickly but will be able to wait for someone on a shorter notice period. **3663**

Group Company Secretary

London/Hybrid

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Assistant Company Secretary

London EC3/Hybrid

This global broker that provides specialist insurance and reinsurance services is now seeking to appoint an Assistant Company Secretary on a full time, permanent basis. You'll be joining a small, dedicated Secretariat function embedded within the legal department of this multinational group. Reporting to the Group Company Secretary, you'll help provide a full range of corporate governance, compliance, board support services to the group. This is a fantastic role that could suit an Assistant Company Secretary seeking more responsibility and autonomy in a smaller Secretariat team or perhaps even someone operating at Company Secretarial Assistant level who is looking for the next step up. Experience of working within a regulated environment will be very useful as will a working knowledge of Diligent Entities. Board and committee support is also an integral part of this role but you don't necessarily have to have live minuting experience to apply - consideration will be given to those who do not have this experience yet. You will need to show meticulous attention to detail with naturally strong communication and interpersonal skills.

3660

Share Scheme Administrator

London EC3/Hybrid

An exciting new opportunity for a Share Scheme Administrator has arisen within this global broker that provides specialist insurance and reinsurance services. This is a brand new role that reports directly to the Group Company Secretary and sits within the legal department. The key focus of the role will be to ensure the effectiveness of all long-term incentive arrangements offered within the Group.

3661

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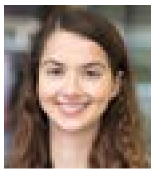


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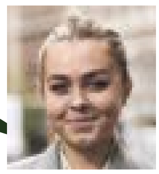

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Wishing all our candidates and clients a joyful Christmas and a prosperous 2025. Thank you for being part of our journey!

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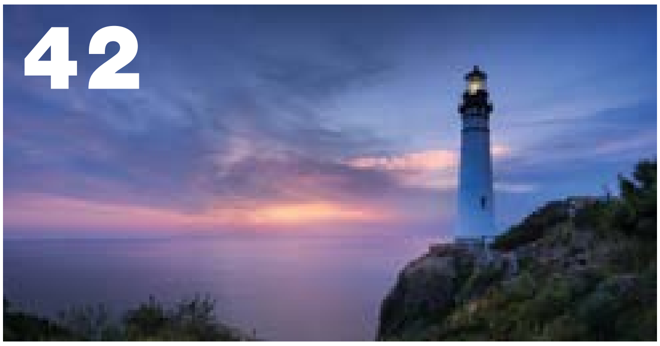

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The Chartered Governance Institute UK & Ireland, Saffron House, 6–10 Kirby Street, London EC1N 8TS. *Governance and Compliance* © 2024 The Chartered Governance Institute UK & Ireland. ISSN no: 2051–2651.
Printed by Warners Midlands plc, The Maltings, Manor Lane, Bourne PE10 9PH. Warners Midlands is fully certificated to ISO 14001:2004, an internationally recognised standard of excellence in environmental management.

History and headwinds

CGI's Head of External Affairs reflects on Rachel Reeves's historic Budget. What does it mean from a governance perspective?

David Mortimer

There is always a sense of curated drama around any UK Budget. From the posed picture of the Chancellor with the 'red box' in hand, to the baying of MPs in the House cheering or booing the announcements, it's all so familiar. This year's was an historic budget, however, with the biggest tax rises since Norman Lamont in 1993. It was also the first delivered by a woman, a long overdue feature of this parliamentary theatre.

The impact of Rachel Reeves's announcements is still playing out. Farmers are certainly unhappy over changes to inheritance taxes for larger farms. More broadly, many employers are worried about the cumulative effect of the changes to employer's NICs alongside the rise in the minimum wage and the impact that would have on their ability to grow their businesses.

But this Budget will have an impact for years to come. Reeves positioned it as a one-off to kickstart economic growth and restore stability. While others debate whether she should have used one of the big four taxes to raise finances, or whether their plans will deliver growth, we can take a view on her plans from a governance perspective.

Purpose: Labour has stated that its purpose is to restore trust through mission-driven government: deliver economic stability, cut NHS waiting times, launch a border security command, set up Great British Energy, and crack down on antisocial behaviour. There is also a sixth mission, on recruiting teachers. Some of these are clearly short term. But they do articulate 'purpose'.

Trust: The key here is economic stability as a foundation for a decade of national renewal. This would sit well with any board's responsibility in the UK Corporate Governance Code to promote the long-term sustainable success of the company. But delivery is key. Can the cabinet be 'an effective and entrepreneurial board' ? And how will we tell whether the Government is delivering? Do we trust them?

Transparency: The Chancellor shared her budget with the independent Office for Budgetary Responsibility (OBR) in advance for its economic opinion of her measures. She also asked them to publish a breakdown of the finances inherited from the previous Government to back up her claim of unaccounted-for costs – a claim they justified to the tune of £9.5bn (somewhat shy of the '£22bn black hole').

The Chancellor committed to the OBR as independent auditor of government finances and plans, with increased powers through the Budget Responsibility Act. This came into force in September and created a 'fiscal lock' to ensure any major tax changes will be assessed by the OBR.

Then in the Budget Reeves announced an Office for Value for Money (OVfM), a Treasury team working with departments to eliminate waste and inefficiency, as well as looking at high-risk areas of cross-departmental spending and investments. Is this a Treasury power-grab? Or a much-needed innovation to prevent costly failures – such as the failed privatisation of probation, or HS2? How the transparency of decisions – and outcomes – is maintained will tell us a lot.

Stability: Stable government underpins Labour's plans for growth and to attract investment. The Liz Truss 'fiscal event', ministers argue, relegated the UK to status of an emerging economy with investors. Readers may have a differing view, but there is no doubt that stability is attractive to investors. So how will the government deliver it?

Taxing questions

The Chancellor stated her tax rises are a one-off to meet the immediate challenges and 'wipe the slate clean' so that public finances can support promised infrastructure improvements. While future tax rises are not ruled out, they are not to be substantial. Corporation tax is capped at 25% for the life of this parliament. Other commitments included permanent full expensing; a million-pound annual investment allowance; R&D reliefs; and tax simplification.

The Government has also committed not to 'raise taxes on working people'. This does box them in, and led to much pre- and post-budget parsing of the term 'working people'. The increase in employer's NICs, the reduction of the threshold to £5,000, and the higher minimum wage will disproportionately affect businesses employing working people on lower wages, including retail and leisure – and in the care sector.

CBI Chief Executive Rain Newton-Smith welcomed the corporation tax roadmap, but called the budget a 'tough one for businesses' that will 'hit the ability to invest and ... make it more expensive to hire people.' The Institute of Directors was more robust: Reeves risked 'trashing economic growth and undermining the public finances,' it stated.

You told us in our recent FTSE Boardroom Bellwether report that investment in infrastructure, including housing, transport and clean energy, are high priorities. And we welcome the government's aspiration for economic growth as the only sustainable way to improve living standards. However, major infrastructure projects in the UK have a poor track record on governance. We would welcome improvements in public sector procurement, project management and financial controls before money is spent.

Red box, red tape?

A commitment to regulatory reform in the Budget is to be welcomed for its ambition: jettison rules deemed an unnecessary burden. But getting the balance right on regulation is always a challenge; regulators tend to believe in what they do. Successive governments have talked a good game on this – anyone remember the 'red tape challenge'? – but action has not always matched fine words.

One positive announcement was for regulation to keep pace with technological advancements. It is time progress on citizens' digital engagement with government departments is matched by delivery of smoother digital journey for business. The Government has committed to the principles behind May's Smarter Regulation White paper. And they will create a Regulatory Innovation Office to help regulators update their various codes, although its scope is not yet clearly defined.

In her Mansion House speech, the Chancellor added that the UK has regulated for risk, not growth – and she intends to rebalance the system. The forthcoming Financial Services and Growth Strategy is one way she hopes to do that.

We can expect several other strategies. Key amongst these will be the Industrial strategy, including the Green Industrial Strategy; and publication of a 10-year health plan in the spring. We will keep abreast of the implications for governance and governance professionals of all these developments. Underlying each plan is the essential need for robust governance to ensure the Government is held to account for its management and delivery.

The pre-election CGI manifesto called for a commission to reiterate support for the UK's good corporate governance traditions; an effectiveness test of regulation; and renewed focus on public sector governance, amongst other measures. Since then, I have written to and met many new MPs to raise awareness of the benefits of good governance early in their parliamentary careers.

Before the election I targeted meetings with the then-shadow cabinet members; the (now) Secretaries of State for Business and Trade, and for Science, Innovation and Technology, along with a number of ministers in these departments; and in the Treasury. We will continue to ensure MPs are informed on good governance and campaign on your behalf.

Of course, the best laid plans of any government are regularly knocked off kilter by external events. For example, Donald Trump's re-election will affect the Government's growth forecasts if he follows through on his ambitions for tariffs. His administration will also have implications for the UK's approach to climate change, with regulatory divergence likely over net zero plans. So while we wish the government good luck in its ambitions for growth and increased living standards, strong headwinds seem inevitable.

David Mortimer IS HEAD OF EXTERNAL AFFAIRS AT THE CHARTERED GOVERNANCE INSTITUTE UK & IRELAND

Reflection and Resolution

It's been a busy year – politically, economically, and in the governance world. Reflecting on developments is important. But so is looking forward with fresh resolve.

Sara Drake

How has your year been? Among the end-of-year parties, the simplest question can flummox us. Maybe you don't have an interesting holiday, or a life milestone, to share. Many of us resort to the old standby and say it was 'busy'? Governance professionals can be so focused on current and future challenges it can be hard to take stock.

Economics and Politics

A year ago, we were bracing for a year of economic challenges with high levels of inflation around the world – averaging at six percent – and a persistent cost-of-living crisis. Against that difficult economic background, many democracies also had elections resulting in the greatest-ever number of votes cast in one year.

While there was little surprise Labour won in the UK, other elections were far less predictable. The bitterly contested election in the USA was on a knife-edge... until the results confirmed a convincing win for Donald Trump.

Much of the debate in the UK and the USA focused on citizens feeling left behind. Anaemic growth in western democracies continued to fuel dissatisfaction. But it is not the same story everywhere. Many of our branches work in countries with higher growth – including Ghana, Uganda and Mauritius, as well as across the Caribbean, all of which have growth several multiples of that in the UK.

Business Investment

In the UK, high borrowing costs and the prospect of an election led to the expectation that business investment would be cautious in 2024. We do not often have a change in governing party in the UK. Labour's ascension to power in July was only the fourth such transition in the last 50 years. Most welcomed the change of party for confirming what the polls had been suggesting for years and providing some certainty over the country's direction. By the time of our annual FTSE 350 Boardroom Bellwether survey – after the King's Speech – there was greater optimism.

This dissipated as businesses waited, in a policy vacuum, for the Budget. It remains to be seen whether the Chancellor has struck the right balance between spending, tax rises, and borrowing. If the intention was to get the bad news out of the way in the hope of a resurgence in sentiment before the next election, the growth forecast from the Office of Budgetary Responsibility has not been encouraging. We must wait for the Government's new industrial strategy to understand how business investment and growth will be supported.

Governance Updates

It has been an busy year, with significant updates to codes in many jusrisdictions, reflecting a global trend towards enhanced corporate accountability and transparency.

In the UK, the Financial Reporting Council (FRC) revised the Corporate Governance Code, emphasising the need for boards to provide a clear explanation of how they monitor and review risk and internal control. The new Irish Corporate Governance Code 2024 offers flexibility through the application of principles and 'comply or explain' provisions, catering to companies with a primary equity listing on Euronext Dublin.

Trinidad and Tobago updated its Corporate Governance Code, also focusing on 'comply or explain'. Ghana launched the implementation phase of the National Corporate Governance Code, to harmonise codes and promote investor confidence. Uganda introduced the Financial Institutions (Corporate Governance) Regulations 2024, aligning their corporate governance codes with international standards. The Bank of Uganda also issued Consolidated Corporate Governance Guidelines, emphasising transparency, integrity, and risk management for Supervised Financial Institutions (SFIs). And Mauritius progressed through the Corporate Governance Scorecard, 2021, reinforcing the National Code of Corporate Governance and providing a new communication framework.

Legislative Developments

The Irish Government's consultation on the Companies (Corporate Governance, Enforcement and Regulatory Provisions) Bill 2024 aims to make it easier for companies to operate efficiently. The new UK Government has proposed an Audit Reform and Corporate Governance Bill with similar aims – attracting investment to encourage growth. Regulators have also been charged to focus on growth. The FRC is consulting on changes to the Stewardship Code which may result in rowing back requirements on investors – and therefore businesses – to demonstrate a commitment to benefits 'for the economy, environment and society.'

Emerging Trends

The relationship between regulation and transparency is a major trend. In the European Union, for example, there has been a strong emphasis on transparency and disclosure, with the adoption of regimes such as the ESG Ratings Regulation.

Debate over the resources required for good governance is a perennial topic. In the UK, many entities have argued that lighter-touch regulation would be more attractive to companies considering listing on the London Stock Exchange. Advocates in the UK and overseas suggest this approach reduces compliance costs and regulatory burden, encouraging innovation and competition.

However, lighter touch regulation can lead to a lack of accountability and greater risk. Robust governance frameworks are essential to stakeholder trust – and attracting investors. This side of the debate argues that the cost of governance practices is justified by the long-term benefits of stability and sustainability. This is a 'Goldilocks' discussion where the right answer is in the balance between risk appetite and security, and one we will see continue into 2025.

Governance professionals are key advisors, needed to steer boards through change. We must ensure there is a good pipeline of talent to match this need by highlighting the benefits of a career in governance. We have been too reliant on 'word of mouth'.

In November, we launched a Brand Awareness Campaign, using social media to promote both governance careers and training; its inspiring images and videos have already sen an increase in membership enquiries. Please follow us on Facebook, Linkedin and X/Twitter and help create a 'network effect' for the profession.

Looking Ahead

Governance continues to make headlines; we relish the opportunity to make the case for the value of good governance. Thank you for all your engagement over the year including the discussions and feedback over these regulatory and legislative changes. Boards will continue to rely on your expertise to ensure compliance, manage risks, and support high standards of governance. As ever, the Institute will be here to support you with resources and professional development opportunities to help your stay ahead of the curve.

May you have a restful and recuperative end to 2024.

Sara Drake IS CEO OF THE CHARTERED GOVERNANCE INSTITUTE UK & IRELAND

Overboarding: how many is too many?

While companies argue that limited talent pools necessitate experienced individuals serving on multiple boards, proxy advisers and institutional investors are beginning to push back on perceived overboarding.

Ruth Sullivan

Overboarding, a relatively new term for the old practice of taking on too many roles across different companies, has come under increasing scrutiny over the past few years on both sides of the Atlantic.

Investors and proxy advisors are worried that some board directors are stretching themselves too thinly, and failing to contribute knowledgeably to strategy and decision-making. It's risky, especially as boards grapple with cybersecurity risks, new technology, and the effects of climate change.

There is little guidance on how many board seats is too many; such advice as there is varies across countries, companies and sectors. The revised UK Corporate Governance Code merely says executive directors should take on no more than one FTSE non-executive director position. It advises boards to take account of other demands on directors' time when appointments are made.

Some investors and proxies have toughened their approach. Legal and General Investment Management, one of Europe's biggest asset managers, says it expects NEDs 'to hold no more than five non-executive directorships in total.' It counts a board chair as two roles given the complexity of the task, and will vote against the reappointment of directors who overstep.

The asset manager clearly spells out the risks of over-commitment: 'As the number of companies a director serves on increases, so does the risk that they may become less effective.'

Institutional Shareholder Services, the proxy voting advisory company in the UK, regards more than five mandates in listed companies as being 'overboarded' and counts executive roles as three mandates. It also votes against directors who breach this level.

US investment manager BlackRock has also been flexing its muscles, voting against executive officers or executive chairs holding more than two roles in public companies, and non-execs on more than four boards, including at Alphabet and Salesforce.

More companies need to follow suit and set out overboarding guidelines. Yet companies in the UK are reluctant to impose numerical restrictions, given that organisations vary hugely in size and complexity. They often blame a limited talent pool for the problem: the best-known, most experienced people are always in demand and take on too many positions. Recruiters must look more widely for new talent, making sure they have a diverse group of candidates with the right skills.

Boards and nomination committees need to play a bigger role in director appointments. 'Recruitment companies need to be given a clear steer by nomination committees. Directors who serve on other boards may seem like an easy option for recruiters,' says Roger Barker, Director of Policy and Corporate Governance at the Institute of Directors. He believes this pattern will only change 'if there is clear direction from the company concerning the commitment that is required.'

Nomination committees could look more closely at the number of roles directors hold, and the type of companies and sectors they are involved in. And board chairs would do well to scrutinise the time commitment, attendance track record and level of contribution each member makes.

Regular board evaluation can help, as board members' performances are reviewed, and refreshment of existing members considered. More clarity from companies and directors would go a long way to reducing overboading.

• *For more on NEDs and the risks of overboarding, see page 50.*

Ruth Sullivan
CORPORATE GOVERNANCE JOURNALIST

Simplicity versus security

The tightening of regulations around the registration of companies may present an ideal opportunity for company secretaries to reiterate their value.

Bernadette Young FCG

For those that have a long enough company secretarial memory to recall the debates and objectives that shaped the changes to company law introduced by the Companies Act 2006, the words 'think small first' will be a familiar phrase.

At the time, a key part of policy was that regulations perceived as adding unnecessary burdens to business should be stripped away. The new legislation prioritised whatever created ease of operations for companies. But now, with the benefit of hindsight, it is clear that the brave new world of deregulated company law, combined with the technological advances – which have made Companies House one of the simplest company registries to which to submit documents, and with which to incorporate new companies – has created some unintended consequences.

That ease of use unfortunately turned into ease of abuse, with the UK becoming a shameful magnet for money laundering and proceeds of crime. With no checks being carried out, it is no surprise that many filings at Companies House have been inaccurate and incomplete, ranging from careless errors and inadvertent oversights, to deliberate and criminal exploitation of a weak system.

The introduction in 2016 of a requirement for companies to register the **PSCs** – in other words, those with more than 25% shareholdings, voting rights or other forms of significant influence over the business – was designed to improve transparency over ownership, particularly where shares are held through opaque structures. But how realistic was it to expect such information to be fully disclosed by those who had disguised their interests for nefarious reasons?

The Economic Crime and Corporate Transparency Act 2023 (ECCTA – see page 35) has already seen some remedial measures introduced to try to improve the reliability of data held by Companies House. The registrar's powers have already been somewhat enhanced, with further measures soon to be introduced requiring directors and PSCs to verify their identity. So it is to be hoped that the UK may finally start to become a less attractive jurisdiction for those who have been taking advantage of systemic flaws in company regulation to hide their criminal activities.

It is, of course, welcome that measures are now being taken to make the registrar's records more reliable and comprehensive, with additional information required to be notified as well as the application of better data checks and ID verification. But as Companies House requirements increase, that ease of use, which was without doubt beneficial to the majority of lawful users, will diminish.

The more onerous requirements that are being introduced are unlikely to create significant issues for experienced governance professionals who are used to implementing compliant systems and processes to meet regulatory obligations. But what about the many directors who no longer have the support of a company secretary?

Historically all UK companies were required to appoint one, but the 2006 Act deregulatory measures included scrapping the requirement for private companies to make that appointment. While PLCs are still obliged to appoint a suitably qualified professional to the role, other companies are now free to operate without that support for their board. In many cases, directors now find themselves faced with additional compliance challenges, and this may create opportunities for the profession to highlight the greater support needed to navigate through the new requirements.

While there may be little parliamentary appetite to reinstate the universal obligation to appoint a company secretary, we can promote the value of our contribution ourselves, not just in terms of getting the Companies House filings right, but in providing wider support to directors in leading and governing their organisations. Perhaps the 'think small first' mantra can be adapted to 'think co sec first'!

Bernadette Young, FCG
IS DIRECTOR OF CONSULTANCY, INDIGO INDEPENDENT GOVERNANCE LTD

The game's afoot

There's, quite rightly, been a huge focus on Labour's first Budget. But there's plenty of other significant change emanating from the new Government. The signs are positive for the future of good governance.

Peter Swabey FCG

It seems a long time since my last article. And in that time, there have been some significant changes on which I want to offer an update. Those not in the corporate sector, please do not switch off when you see these – a surprising number of you are likely to be affected too.

Changes at Companies House

First is something about which I have been banging on for a while – the Economic Crime and Corporate Transparency Act 2023 (ECCTA) and resultant changes at Companies House.

On 16 October, I attended a Companies House stakeholder event, *Changes to UK company law – what's next*? There were two key takeaways for me: a firmer timetable than has been published to date; and greater clarity on the work already being done and the resourcing underway. The latter has always been my major concern: will Companies House be able to respond as quickly as companies need? The evidence they presented suggests they are putting themselves in a good position to do so.

The timetable was also most helpful. I gave full details of this in my Technical Briefing on 8 November and, of course, everything is dependent on secondary legislation and will be kept under review. (For now, you can find more links to resources on the developments on page 35 of this edition provided as handy QR codes.)

There will be key moments on the implementation timeline that require your attention. So it's important that you start to prepare, and that you keep your registered email address and other details up to date. You can also keep up to date by visiting the Changes to UK company law website. This is regularly updated with new information. The intended implementation timeline is on the Companies House website, but the key dates are:

Spring / Summer 2025

- Anti-money laundering supervised firms and sole traders can apply to become Authorised Corporate Service Providers (ACSPs).
- Individuals can voluntarily verify their identity.

Autumn / Winter 2025

- All new directors and people with significant control (PSCs) must verify their identity.
- All existing directors and PSCs must verify their identity over the following twelve-month period.

Spring / Summer 2026

- Anyone filing information at CH must verify their identity.

Autumn / Winter 2026

- End of the ID transition period. Anyone owning, running or filing on behalf of a company must now be verified.

- Compliance activity begins against those who have not verified their identity.

The key difference in the new legislation is that directors must be registered – which means having already had their identity verified – with Companies House before they can act as a director. And this applies to all companies, including those buried in the corporate structures of charities, and entities in other sectors.

Audit Reform and Corporate Governance

The second significant development relates to the draft Audit Reform and Corporate Governance Bill, which made a welcome appearance in the King's Speech on 17 July. I observed that this was a hopeful indication of the priority the Government places on governance.

Well, I don't know about that but, with an energy that seems almost indecent after the glacial pace at which audit reform has moved in recent years, I am delighted to report that something is happening.

On 7 November, I was invited to a meeting chaired by Justin Madders MP, Minister for Employment Rights, Competition and Markets, his civil servants, and a dozen other stakeholders to discuss some of the issues that the Bill raised. I am obviously delighted that one of the key policy asks from the CGIUKI manifesto is being acted on so quickly and I will be calling on members to support this work over the coming months.

The draft Bill is intended to set the new regulator **ARGA** on a statutory footing, with the powers to sanction directors and address issues of 'poor financial reporting'. I felt there was real consensus that the time is ripe for action in this space and the Government seems keen to engage with the market to future-proof governance. The Bill is seen as a key element of the Government's growth agenda.

It is important to remember that the UK corporate governance system is not actually broken and, indeed, is respected around the world for the stability and transparency that have evolved over decades and been copied extensively overseas. I pointed out that something the Government – indeed all of us – can do is to talk up the UK corporate governance regime. But I do also sound one note of caution. We should not measure the success of the UK market by the number of firms who choose to list or domicile here. This is an easy measure against which some might choose to hold themselves, but those companies that have issues with UK corporate governance rules may not be companies that we want here.

I also took the opportunity to repeat our long-standing line on audit: audit reporting is improving, as we see in the CGI Awards each year, but the key issues are the expectation gap, where public expectation of audit is not aligned with what the engagement letter says; the delivery gap, in terms of the quality of work done by auditors, which FRC reporting shows is not good enough; and the confidence gap, which can manifest as doubts about the performance of firms outside the 'big four'. Audit market concentration is an issue, but a different one from audit quality, with different solutions. For example, shared audit does not help audit quality.

The other message that came through loud and clear – as it often does – was proportionality. If the Government is serious about its growth agenda, it must recognise that what a former colleague described to me as 'FTSE 100 solutions' are not the right answer for every organisation in every sector. There is no one-size-fits-all solution to governance.

There was a sensible focus on 'getting audit done' (not the Minister's exact words!). And although there are other issues that could, and should, be addressed, the priority should be the establishment of ARGA. It would be a mistake to reopen debates which delay that. If that means separating it out from rest of the Bill, so be it. I am also aware that the Department is looking at the definition of a Public Interest Entity (PIE), as from the workforce perspective there is no difference between a company being private or public; the situation on insolvency; and the need to clarify the position of virtual general meetings.

Finally, on 11 November, the Financial Reporting Council launched its consultation on significant updates to the UK Stewardship Code. The avowed intention is to 'streamline reporting requirements, reduce burdens for signatories, and ensure a clearer focus on the purpose of Stewardship and the outcomes that it delivers'.

The Institute will be responding to this and will be seeking support from members in the next Technical Briefing. We are in the early stages of our review, but it strikes me that that there is a greater focus on investor responsibility to their clients than on their responsibility to society as owners of PIEs. That may be an area of focus for us as so much of the UK corporate governance system relies on the engaged participation of shareholders.

Comments and any offers of help would be much appreciated at policy@cgi.org.uk

Peter Swabey FCG
IS POLICY & RESEARCH DIRECTOR
AT THE CHARTERED GOVERNANCE INSTITUTE UK & IRELAND

'A governance role, for me, is about seeing the whole picture'

Catherine Kewish is dual qualified as a lawyer and governance professional, giving her a unique perspective within her firm.

INTERVIEW BY HOLLY BENSON
FORMER EDITOR OF GOVERNANCE AND COMPLIANCE

Catherine Kewish spoke at the CGIUKI *Building your governance career* event in September and, after hearing about her experiences, I was keen to find out more about her route into governance. We know that many governance professionals start out as lawyers, and that is also true for Catherine. As she became more interested in governance, and moved into a governance role at the accountancy and advisory firm BDO LLP, she realised that becoming qualified would build her credibility as well as equipping her with the skills and knowledge to really excel.

I asked Catherine about what prompted her to make the switch from lawyer to governance professional. She told me, 'There are a lot of similarities between professional roles in the legal and the governance context. There are skills in common, such as being analytical and paying attention to detail, but more than that, both types of roles require you to work with a range of individuals with different personality types. Whether you're working on a contract, a case you're bringing to court, or on a change in strategy within an organisation, you will be in situations where you're working with a variety of individuals with different ideas. You've got to find a way to bring them together, deal with challenges and tensions between them and try to avoid these escalating into conflict. The ability to steer that steady path is quite similar in both.

'I really enjoy deploying my skills to achieve this, but the key difference between a legal role and a governance one is that governance sits at the heart of an organisation. If you're purely providing advice – which is quite likely as a lawyer – there is a limit to how far you are included in discussions. In a governance role, for me, it's about seeing the whole picture. You're involved in conversations right up until you see the change in action. That means you can feel that you have a real part to play.'

Reflecting on that role at the heart of an organisation, Catherine went on to say, 'My experience has been that senior management and independent NEDs really value governance input, and you can quickly become part of that senior management/independent

> **The boardroom dynamics course may have been hard work, but it was a really positive experience**

NED team. I find that exciting – having that seat at the table.'

Thanks to her law qualification, Catherine was able to take advantage of the fast-track route to becoming a Chartered governance professional, meaning that she was exempt from taking some of the exams. However, she cautioned, people shouldn't be fooled by the name – undertaking the fast-track qualification is a big commitment requiring hundreds of hours of study, even for an experienced lawyer. She reflected, 'I don't want to put people off, but you do need to go in with your eyes open. It is a masters-level course, so you need the energy and commitment to take it on – but that's a positive thing.'

Although it's a big commitment, Catherine felt that the time invested in undertaking the qualifying programme started to pay off right away. 'As you're doing the course, you can draw on what you're learning within your day-to-day role,' she said. 'So, you immediately start to feel that it's worthwhile putting in the extra hours. I would really recommend the boardroom dynamics module. I thought that was really good in terms of providing practical skills and developing an understanding of the psychological side of working with a Board, which is as important as knowing the ins and outs of the corporate governance code.

'Because the course is challenging, you need to pick your time to do it,' she added. 'I would say, if you're just starting a new job in governance, it might not be the right time to do the qualification, because you probably want to get used to the new role first. I decided to undertake the qualification at a point when both of my daughters had started full-time school, so I had a bit more time on my hands. I could really dedicate that extra time to my studies.'

While the course is demanding, Catherine praised the support and resources available to CGI throughout and concluded, 'Overall, it may have been hard work, but it was a really positive experience.'

Chartered status

Before undertaking her governance qualification, Catherine was already a respected lawyer within BDO. I was curious to know whether becoming a Chartered governance professional had had any impact on her status at work or the way that she was perceived.

'Being Chartered can affect people's initial impression of you,' she explained. 'It helps them to build up that picture and recognise that you aren't just somebody who knows as much as they do, you're working with someone who is uniquely qualified.'

Given that it's a popular career switch, I asked if Catherine had any words of advice to share with lawyers who are thinking about moving into a governance role. She had three top tips: 'In your legal role, try to find opportunities to work with senior management. That is where I started, and I think it's really helpful because it sets you on a path to developing relationships with key individuals who you may then look to work with on a more full-time governance basis. It can also help you to get a feel for whether you could work with them and it provides an opportunity to showcase your own expertise.

'I would also recommend attending CGI conferences. They are a great way of picking up some pointers as well as learning about the profession.

'I don't think I'd necessarily suggest anyone should do a formal qualification until they have definitely decided to go down the governance route. But exploring the potential options in this regard through attending those seminars and conferences can be really useful.

“

Being Chartered affects people's impression of you. You're working with someone uniquely qualified

'The other way to test the water can be through voluntary work. Taking on a role as school governor or taking up a trusteeship can provide a lot of insight. Those sorts of governance roles can help you to see if it's the right area for you.'

Work-life juggling

One thing that Catherine has been very candid about is that she is a working mother managing 'the juggle'. She's a real advocate for working parents and I was interested to find out how a governance role can support that lifestyle.

'You can't have it all, and you have to recognise that,' she explained. 'But what I have found in my governance role is the ability to be quite autonomous. The type of work means that you can be reasonably flexible with your time. There are obviously limits, and it should always be a two-way partnership between you and your employer, but I would say governance does lend itself quite well to working in a way that fits with home life.

'I find that there's a good balance of required face-to-face time, such as board meetings, and time which I can manage independently – for example, meetings with management, the chairs or the independent NEDS can, to a certain degree, be done around your own schedule because they're one-on-one meetings. The same goes for report-writing or delivering governance projects. I often pick up my daughters after school, spend the afternoon with them and, once they've gone to bed, I can log back on to work. There's nothing to stop me doing that and it works for us.'

With this flexibility, though, I wondered if there is a bit of a risk of work and personal life becoming too intermingled. How does she set boundaries to make sure that she's achieving her desired balance of home and work life? 'One of the key things to recognise is no one size fits all,' she said. 'What suits one person might not be the approach that works for someone else.

'For example, there are people in my team who work part time and who are non-contactable for their non-working days. That works for them, but it didn't feel like it would work for me. The approach I've taken is a little bit more fluid and helps me to accommodate work that might arise at any time in the week. Now I work three days and have a further half day spread over the rest of the week. That means that if something comes up on my non-working days, I can pick it up because I have some extra time in the bank. Equally, if I'm not needed, I use those extra hours to do some additional work on my usual days to make sure I'm on top of everything.

> **"I encourage people to be innovative in order to find an approach that works for them**

'So far as I was aware, nobody had asked for that arrangement before, but I thought I could make it work. I would encourage people to be innovative in order to find an approach that works for them, while being aware that it can't always be just about you and what you want – you have to make it work for both you and your employer. Remember, you are a unique asset to your organisation so you need to think about how you can make a positive case for why your adjusted arrangements will work for both you and the business.'

Catherine's approach is innovative, then, but I was curious to know whether she had had any working-parent role-models when she was starting out in her career. 'I definitely have had role models,' she said, 'many of whom work at BDO, and not always just females.

'What I'm not so keen on is the "super woman" ideal. I think that, for many people, that isn't the norm. For me, it's been inspiring to see female partners who sit in senior management roles within BDO and other organisations and who are very open and honest about their own challenges with "the juggle", and who are very happy to share how they have approached working and being a mother, where they will give flex and where they set their boundaries, and how to keep to those and keep honest to yourself.'

Catherine is certainly living proof that you can succeed and develop as a working parent if you're willing to collaborate with your employer to find a solution that meets both of your needs. It was clear throughout our conversation how much she is enjoying her new career in governance, as well as how much her experience as a lawyer adds to her role – it's heartening to see a member flourishing in and advocating for the profession.

For those who are feeling inspired to follow in Catherine's footsteps, CGIUKI's training courses may be a good place to start. Find out more on the CGIUKI website and keep an eye out for our next *Building your Governance career* event.

Chartered Governance Institute UK & Ireland
AWARDS 2024

A night to shine

Governance professionals can be relied on to value substance over style. But at the CGIUKI Awards 2024, they proved they can still put on a show.

Paul Johnston ACG (above), Associate Director at One Advisory Limited, was delighted to hear the firm had won Service Provider of the Year. He explained, "This made me happy. This photo proves that." Very cool, Paul.

David Styles (above) was handed the coveted award for Outstanding Achievement by CGI CEO Sara Drake. David was joined on the night be former colleagues from the FRC, where he spent almost a decade as Director of Corporate Governance and Stewardship – service that contributed in no small part to his recognition by the CGI.

All the awards are special, but the blue ribband trophy is surely Governance Professional of the Year, won this year by Alia Fazal FCG, Head of Corporate Governance, bp plc (above)

A double win for the team from Dr Martens – Zhwan W (above right, Company Secretarial Assistant & Legal Team Ops Manager) and Rebecca Flaherty (above left, Senior Company Secretarial Assistant represented the iconic bootmaker on a great night for its team.

The unsung heroes of high-performing boards

Board committees represent the 'engine of the board' and play a crucial role in its ability to excel for shareholders, employees and stakeholders.

KIERAN MOYNIHAN
MANAGING PARTNER, BOARD EXCELLENCE

A wise board chair once said to me that the real secret to the success of the best boards he has served on were exceptional, hard-working board committees who did the heavy lifting for the board. This work was undertaken quietly in the background, enabling the board to be highly strategic and excel for its shareholders, employees and stakeholders.

A key part of our board evaluation work is looking at the board committees. In recent years, we have seen the workload of committees increase significantly to the stage where many board directors spend considerably more time in committee meetings that board meetings. Boards are being challenged to increase their focus on key and emerging priorities such as culture, disruptive technologies like artificial intelligence, cybersecurity, **ESG** and employee engagement. This expansion translates to the board committees stepping up to oversee and support the executive team in these areas.

Meanwhile the audit and remuneration committees have long been in a very bright spotlight as high-profile failures in financial oversight and scrutiny of executive pay continue to be focus areas for shareholders, employees, regulators and stakeholders.

The raison d'etre of board committees

At the core of the board and committee structure is the authority and delegation of responsibilities to the committees to conduct detailed work on behalf of the board. These are laid out in the committee terms of reference. Each board committee, which comprises a subset of the **NEDs**, focuses on a specific area, which allows it to implement the detailed and sophisticated oversight appropriate to the scale and nature of the organisation. In addition, the committees are well placed to provide support to the members of the executive team who are actively engaged in those areas.

Decisions about which committees are needed to support the board are important. The majority of corporate and large organisations would typically have a core set of audit/risk, remuneration and nominations/governance committees reporting into the main board. Depending on the sector, there may also be additional committees such as investment committees, an ESG committee or a clinical governance committee.

A key tenet of corporate governance is that while significant responsibilities have been delegated by the board to its committees, the ultimate legal decision-making authority rests with the main board of directors. This means that board directors who are not on a specific committee need to ensure that they understand, keep on top of, and, where appropriate, constructively challenge key recommendations from a committee.

In a number of cases, we see boards that are over-reliant on guidance or recommendations from their committees and which fail to challenge them constructively. In many corporate and board scandals, a critical committee – such as the audit and risk committee – is found to have failed in its duties. In some cases, the boards had blindly accepted assurances and recommendations which, in hindsight, proved to be fundamentally flawed. In many high-profile corporate failures such as Carillion and Wirecard, audit and risk committees lost their way badly, and contributed significantly to the board's overall failures.

Composition of a committee

In reality, a committee is a smaller version of the board and thereby critically depends on the calibre, skillsets, judgement and work-ethic of the board directors appointed to it. Due to the technical nature and critical importance of the audit committee in overseeing the financial health of the organisation, the majority of governance codes and regulatory environments impose strict requirements – at least one member should have an accountancy or financial qualification and current financial sector expertise, for example. For other committees, the board chair would normally work with the nominations or governance committee to select members.

While the importance of diversity is normally centred on the board, diversity in committees is also important. It is healthy for committee effectiveness to have a range of perspectives brought about by having a vibrant mix of genders, ages, professional backgrounds and ethnic and cognitive styles.

> **“In many corporate and board scandals, a critical committee – such as the audit and risk committee – is found to have failed in its duties**

“No matter how strong a board committee, it can lose its way

Groupthink problems can occur just as easily in a committee as they can in a board. For this reason, the board directors not on the committee need to be vigilant – and challenge, where appropriate, key material guidance and recommendations from a committee.

Another important benefit of the committee structure is that it enables an external expert to be co-opted onto the committee to address skillset gaps. In recent years, many board committees have struggled to acquire the necessary skillsets to deal with new areas of responsibility including ESG, cybersecurity and new technologies. The co-option of external experts has played a critical role in plugging these gaps and I would encourage more committees to look at this option.

Leadership of the committee chair

Just like the board chair, the committee chair has a critical leadership role in enabling a highly effective committee that adds significant value to the board. They set the bar for the committee members and executive teams supporting the committee. Working closely with the company secretary and lead responsible executive, they design the agenda and overall annual work plan to ensure that the committee discharges its oversight role as well as supporting the executive team. The committee chair’s partnership model with the lead executive, for example the **CFO** or **CPO**, sets the tone for a healthy engagement model in the committee.

Committee dynamics

While the work of a committee is more technical in nature than that of the board, healthy team dynamics are just as important. In the best committees there is a virtuous cycle of challenge, debate, respect and trust. Committees where robust intelligent challenge and oversight flourish, and all committee and executive team members are committed to getting the best out of each other, tend to be the ones that are most effective.

By the very nature of a committee’s work, executive team members and their staff will be subject to more detailed questioning than is often possible at a board meeting. ‘The devil is in the detail’ is an apt phrase for committee work and the reality is that for committee members to discharge their legal and fiduciary responsibilities, they must get ‘under the bonnet’. If either they or the board have serious concerns, the committee needs to get to the bottom of them.

An interesting phenomenon we see from time to time is where the board chair and non-committee members turn up at either all, or a significant number of, committee meetings. While this sounds beneficial in terms of the non-committee members being up to speed, it is a practice that we discourage as it can impact committee team dynamics and weaken the ability of the board to challenge key guidance and recommendations from that committee.

Engagement with the board

The quality of committee reporting to the board is critical: it enables the board to understand the main focus areas of the committee, the background to its guidance and recommendations and, importantly, what keeps the committee awake at night. Standard practice is for committee reporting packs, developed by the executive team, to be shared with all board directors – with appropriate treatment for sensitivities around remuneration and nominations committee packs. The reality is that in many listed and corporate boards, particularly those that are regulated, the size of the committee packs themselves can run to several hundred pages. The result is that non-committee members can struggle to review these in depth.

While we are very conscious of the workload placed on busy committees, we recommend a high-quality executive summary from the committee chair to the board. This summary should highlight the critical focus areas and priorities of the committee and spotlight priority areas of the committee packs for the board members to review. This can be challenging when the board and committee meetings are held on the same or consecutive days and in that case, the committee chair can provide a verbal update to the board with a similar structure to a written executive summary report.

The three-lines-of-defence model

While all board committees have an important role, a particular mention must be given to the most important committee of all, the audit and risk committee. At the core of the responsibilities entrusted by shareholders and stakeholders to board directors is oversight of the financial health of the organisation. This includes ensuring that a modern, robust internal controls framework is in place to minimise the potential for fraud or false accounting – and ensure that the organisation is, at all times, able to accurately report its financial position to its shareholders, stakeholders and regulators.

The pressure and workload on audit and risk committees have never been greater. They play a crucial role in the three-lines-of-defence model, alongside management itself and the compliance functions. While post-mortems on many board and corporate scandals across the world have pinpointed audit and risk committees that failed in their duties, this needs to be seen in the light of the relentless increase in complexity of the financial ecosystem in which these committees operate.

This ecosystem includes, among other things, finance teams, internal auditors, external auditors, regulators and international accountancy rules. In recent years, new responsibilities such as cybersecurity oversight and IT governance have been added to the audit and risk committee's long list of responsibilities. All boards need their audit and risk committee to be highly capable, with strong current accountancy and financial expertise, on their toes and at the top of their game.

The engine of the board

Board committees represent the foundation layer of a high-performing board. The trojan work that strong board committees put in enables the board to focus its attention on the 'vital few that move the needle for the organisation'. Board committees are teams in their own right. While smaller than the board, they have very much the same challenges. Team dynamics, getting the balance right between intelligent robust challenge, debate and oversight, and providing high-quality support and encouragement to the corresponding executive team members are all issues that are common to boards and committees.

High-performing boards also realise that, no matter how strong a board committee is, they can also lose their way, experience groupthink, or get too close to the executive team members they support. There are times when for materially important decisions or concerns the non-committee members must constructively challenge a committee. The selection of committee chairs is crucial and, given the relentless increase in workload and importance of board committees, far greater attention is now being focused on board director recruitment in terms of their ability to lead and contribute to the committees' work.

They truly are the 'engine of the board'.

Kieran Moynihan is the managing partner of Board Excellence (board-excellence.com) – supporting boards and directors in the UK, Ireland and internationally excel in effectiveness, performance and corporate governance.

Good practices

In high-performing board committees, we see a common pattern of good practices including:

- annual review of the committee terms of reference
- annual work planner developed that maps to the terms of reference
- annual evaluation of the committee's effectiveness
- annual review of the committee's composition and diversity, feeding into the overall board composition, diversity and succession planning
- an excellent committee chair getting the very best of out of the committee members and supporting executive team
- the board chair working with the committee chairs to ensure appropriate cross-pollination between the committees and co-operation between committees
- openness by the committee to co-opt external experts where there are genuine gaps impacting on the committee's ability to excel
- high-quality reporting to the board that gives non-committee members insights into the logic underpinning the guidance and recommendations of the committee

ESG:
Intent isn't enough

High hopes and voluntary codes mean we're missing out on the real benefits that a rules-based ESG system could create.

JACOB PITT ACG
ASSISTANT COMPANY SECRETARY MITSUI BUSSAN COMMODITIES LTD.

Since its rise to prominence, **ESG** has confounded many as an awkward marriage of three loosely connected concepts – environmental, social, governance – into an overly expansive framework. Some of what we might consider to be ESG is codified in law (**TCFD** reporting and the Modern Slavery Act, for example). However, too much of it remains voluntary for most businesses. It faces further challenges too: it can encourage uncompetitive behaviour; few can agree on what exactly it is; and there is no commonly understood method to 'do' ESG.

I do not wish to make an argument against ESG, but rather a plea that it should go further. The environmental concerns, desire for social progress and enhancement of standards of governance are, in my view, are best addressed through better rules and regulations instead. To understand why, we need to address three critical issues with ESG as we know it – and how a more rues-based approach might help.

1. ESG is optional

From my past experience of discussions around ESG with senior leaders, the same question would repeatedly arise: *do we have to do this?* Implementing ESG initiatives made sense in the era of cheap credit – if the business is profitable with easy access to investment, then it ought to give something back. But, as we have seen since the onset of the war in Ukraine, when credit is harder to come by and margins are squeezed by inflation, the 'nice-to-haves' are regrettably scaled back to protect core functions.

There was a case to be made that having strong ESG credentials would improve access to ESG funds, in turn driving up the share price. However, an exodus from ESG funds, amidst a smaller drought in equity funds, have weakened this case. There are still ESG funds that perform well and are capable of raising significant capital from investors. But many are outperformed by non-specific funds which are generally better diversified.

There is also an argument that their optional nature can turn ESG initiatives into a public relations exercise. This contention is weak because, in principle, there is nothing wrong with good PR. Companies – like other organisations – are supposed to tell good stories about themselves. The issue arises when there is hypocrisy, misdirection or mistruth regarding a company's professed commitments and achievements.

2. Voluntary ESG makes competition tough

Rules-based systems, if sufficiently rigorous, help to level the playing field among competitors. Voluntary guidance, on the other hand, can punish those who go above and beyond.

Let's explore this via a thought experiment. Imagine you are the owner of taxi firm Great Taxis Limited that operates in a small town. In this scenario, there is one competing cab firm, Other Taxi Firm Plc, operating in the same area. As the owner of Great Taxis, you are considering converting your fleet to electric vehicles.

> **"An issue arises when there is hypocrisy, misdirection or mistruth**

In scenario A, you are going electric on a purely voluntarily basis. You incur significant capital expenditure to achieve this, either through borrowing or from investors, the costs for which you must inevitably pass on with higher prices. Meanwhile, Other Taxi Firm does not change its fleet of old diesel cars. They don't incur costs and have no need to raise prices. The result is that their lower prices stifle your business. Some environmentally-minded customers will actively choose your services, but the typical punter at the train station cab rank may only notice the cost. There has been a race to the bottom and the good guy has lost.

Now let's consider scenario B: the government stipulates that, say, 60% of taxi firms' vehicles must be electric by 2035. Now that the playing field has been levelled, Great Taxis and Other Taxi Firm can compete on how to achieve the mandated target in the most effective way. Your customers no longer have to choose between their pockets and the planet, and neither firm is likely to go out of business. Government action may have spurred investment and encouraged lenders to facilitate such a transition, as is often the case, thereby reducing overall capital requirements for businesses.

There is also evidence that applying high ESG standards, for example in lending decisions, results in significant advantages to larger businesses with greater resources, at the expense of small businesses and start-ups; and worsening competition and innovation. Most major banks offer sustainability-linked loans for which the interest rate increases if borrowers miss certain ESG goals. Such loans are not unreasonably now under scrutiny by the FCA.

3. No one can agree on what 'ESG' is

There has been an influx of new frameworks such as the Global Reporting Initiative, the Sustainability Accounting Standards Board and the UN Sustainable Development Goals, to name but a few. They are all useful, but none represent a clear and obvious industry standard – at least not yet.

Furthermore, ESG funds can straightforwardly draw up their own standards, resulting in some unusual-looking investment decisions from fund managers that are justified by their own guidance. Some such

“Regulators need to improve and standardise [ESG] corporate reporting

funds have invested in tobacco and oil stocks, to the confusion of their investors. This lack of consistency undermines confidence.

ESG ratings agencies can also lack transparency, and some even rely on self-reported data. To its credit, the London Stock Exchange Group's ESG ratings do have a good deal of rigour – they audit the information and use over 750 data points. Notwithstanding, the EU's recent proposal to regulate ratings agencies is to be welcomed.

It has also been said by many commentators, predominately on the other side of the Atlantic, that ESG is a culture war issue or has somehow been weaponised for political purposes. This ought to be disregarded as hot air, as evidenced by a poll of asset managers in the US which found the anti-ESG movement had no bearing on investment decisions.

Why we need a rules-based system for ESG

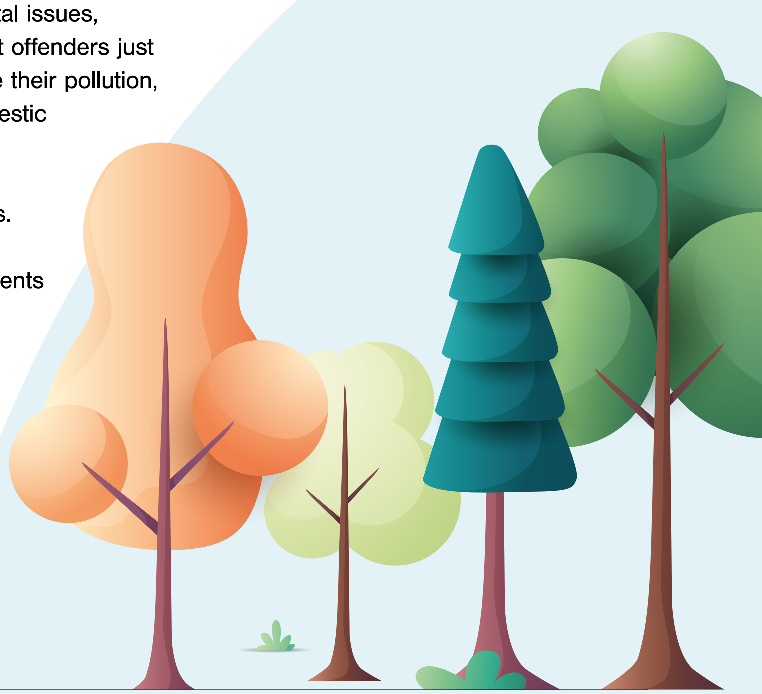
Having complained about the pitfalls of ESG, it is important to discuss why a rules-based system may be preferable. From the dawn of human civilisation, clear codes and rules have provided a degree of certainty as to the outcome of behaviours. They are not bulletproof and the **Exception Paradox** cannot be discounted. But they do provide for accountability and enforceability. If a company breaches its self-adopted ESG pledges, it is possible that nothing meaningfully adverse is going to happen besides bad press; the same cannot be said of laws and regulation.

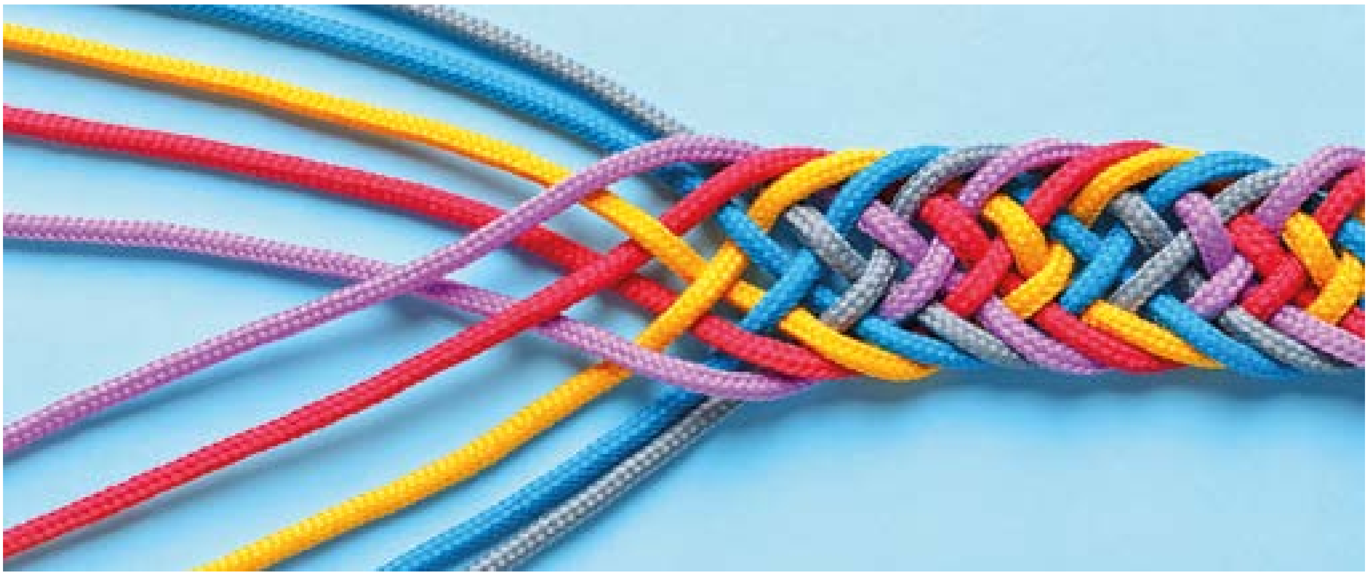
The challenge with using laws and regulations to address ESG concerns is that they can be politically contentious. How, for example, do you address poor social mobility through rules? Quotas are deeply unpopular and structural changes can take time to take effect. Regarding environmental issues, can't many of the worst offenders just outsource and offshore their pollution, thereby rendering domestic legislation ineffective? There isn't an obvious solution to these issues.

In order to enhance transparency, governments and regulators need to use their powers to improve and standardise corporate reporting for a start. Where necessary, tougher, binding targets for, say, the energy transition should be introduced and enforced. Institutions must facilitate the availability of finance to businesses who need to adapt their business model for **Net Zero**, as we know it will be incredibly expensive. On social issues, companies that lack sufficient diversity could be obliged to explain why in their reporting, and commit to enforceable action plans that are drawn up in co-operation with regulators.

On the 'G' in ESG, it is a credit to the corporate governance profession that this concept is generally understood and there are high-quality codes against which companies can be measured.

Of course, we shouldn't be complacent – the next Enron is always just round the corner. But the codification of governance following the Cadbury Report has had a transformational impact. It should be an example of how to achieve all of ESG's goals.





People processes

New board behavioural dynamics research looks at the maintenance of board relationships; processes to achieve better behavioural dynamics; and how to facilitate proportional processes depending on the board setting.

LORETTO LEAVY FCG
UNIVERSITY OF EXETER BUSINESS SCHOOL

PROFESSOR RUTH SEALY
UNIVERSITY OF EXETER BUSINESS SCHOOL WORKING IN COLLABORATION WITH CGIUKI

In recent board behavioural dynamics workshops, we found that the availability of company secretaries and governance professionals was a key influencing factor when it came to the application of board processes.

Although skills for enabling board relationships are innate to most company secretaries, and discussions around dynamics have increased in recent years, there is no definitive guidance relating to behavioural dynamics. We have created 'how-to' guidance to address this gap, which we will launch for formal consultation in early 2025. Ahead of that release, we're highlighting six processes for board behavioural dynamics that should be in every governance professional's arsenal, to be applied proportionally to their board.

Six people processes

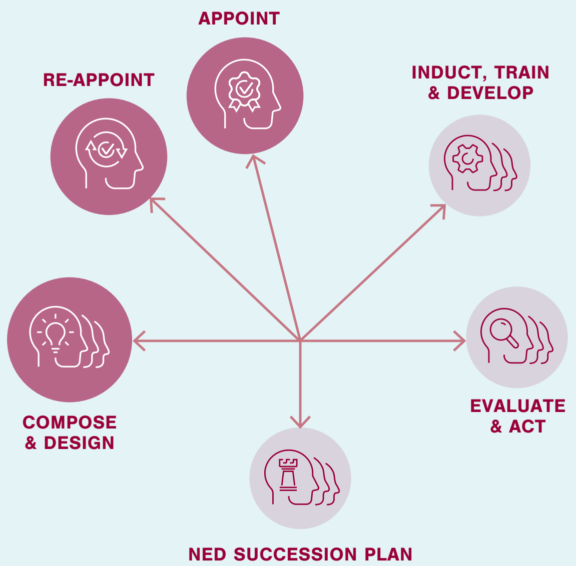
Our research focuses on enabling the board to work together *outside* of decision-making. Decision-making processes are important, but board effectiveness is derived equally from both the task of decision-making and how the board works together. We call the latter 'board behavioural dynamics'. We have investigated it via academic and company disclosure research, looking at 50 corporate governance reports and nomination committee terms of reference of large and highly regulated boards with mandated committees. We found each board delivered six distinct people processes that assist in bringing individuals together into a collective.

Although there are links, these six are not a static reflection of regulatory requirements. There is also a high degree of variability in their application. This allowed us to distinguish three patterns of maturity for each process. We mapped these maturity levels for the contextual pressures influencing the process, the procedural steps, and outputs and outcomes. Then we held behavioural dynamics workshops over the past three months to receive an initial validation of our maturity maps, enhancing them with feedback to ensure these six align with real-life board experiences.

1. Appointing

When we consider board people processes, we invariably think of appointments and nominations, which place directors on the board. These are actions taken by the chair supported by the company secretary. The first level of maturity when it comes to appointing relates to agency-led recruitment of directors, normally selecting replacements who have similar skillsets to the directors being replaced.

Boards that have reached the next maturity level will have the nomination committee leading the process for director appointments, working with an agency or via open advertisement as aligned to their needs for current and future strategies. The most mature approach builds on this



Overview of the board behavioural dynamic processes © Leavy & Sealy 2024

to formally intertwine outcomes from the other behavioural dynamics processes, and extends the fit beyond strategic skills to encompass the behavioural balance of the board.

2. Inducting, training and developing

Induction aims to build director knowledge so that they can be effective as soon as possible. Training and development have a similar aim of continuing to build directors' insights and awareness of the board, the organisation and its working environment. As with appointing, there was much variation in the disclosures we reviewed. However, the maturity patterns which emerged for induction mirrored those of training and development. Therefore, we categorise inducting, training and developing as one process.

Maturity approaches for this process build incrementally and start with a focus solely on legal, regulatory and governance requirements; then add a structured programme with strategic and operational insights; and finally, at the most mature level, also focus on engaging with the business. The impetus for this process is derived from market expectation rather than regulation.

3. Evaluating and acting

Although there are greater regulatory requirements for evaluation than for some of the other processes we identified, there remains significant variance in approach, with a reluctance to report transparently on resultant actions other than in the most mature boards. Although evaluation is important, acting on the results is essential if boards are to achieve continuous progress, which is why we have called this process 'evaluating and acting'.

Approaches build incrementally with boards reviewed by questionnaire at the most basic level of maturity. This then expands to board, committee and director reviews with a focus on in-year actions. At the most advanced maturity level, this process will be interlinked with inputs from the other processes, with actions feeding into director, committee and board objective-setting with an important focus on prior and in-year actions.

We highlight that evaluation should continue to be led by the chair, supported by the company secretaries and governance professionals as a key method for board improvement. However, our guidance will recommend that evaluation processes and actions are overseen by the nomination committee to ensure they are connected closely with the appointment and re-appointment purpose of the committee.

4. NED succession planning

Within our sample there was a bias towards discussing executive succession. We focus on NED succession to highlight its importance to behavioural dynamics including the sequencing of departures between executive and non-executive transitions. We found an incremental approach highlighted within our sample, starting with a focus solely on the rotation of NEDs at the end of their tenure, with like-for-like replacements planned; then enhancing the tenure rotation view with consideration of the strategic needs of the board; and ultimately adding specific plans for emergency scenarios and the medium to long-term.

We recommend that additional focus is given to NED succession planning by the chair with oversight from the nomination committee as an essential method for maintaining appropriate capacity for board leadership.

5. Composing and designing

We view composition and design as an essential mechanism in achieving an optimal board. In our sample, all boards reported adequately on the composition of their board based on diversity characteristics and of their expertise. In more advanced reporting, this developed to include an assessment against a skills matrix and consideration of evaluation actions. However, due to the dispersed nature of reporting, it was challenging to understand the structures, principles, policies and procedures in place to inform the design of the board. The diversity policy in more mature boards allowed some coherent sight of this.

Our guidance will suggest that there needs to be a step change when it comes to composing and designing boards, with more explicit and formal approaches to design. Indeed, we will argue that this should be the first process a board undertakes.

Our guidelines will suggest that the optimum ‘compose and design’ approach should consider three key steps:

- **Composition review** – assess the board position.
- **Optimal design principles –** consider what the board wants to have, factoring internal and external contextual pressures and intended outcomes such as inclusion.
- **Gaps and plans –** enact changes for any additional areas and monitors these.

Composing and designing will be explored further in our guidance consultation and in chair and SID interviews as part of our wider research programme.

6. Re-appointing

Our research found limited reporting of this important renewal. We have highlighted three levels of maturity in re-appointing processes. The first approach made re-appointments against maximum tenure with non-appointment only where the director cannot act due to time availability. The second considers actions from board evaluation and takes explicit decisions on re-appointment on the basis of future strategic skills requirements including decisions to not re-appoint. The most mature approach takes input from the behavioural dynamics processes before deciding on re-appointment or otherwise. This is linked to future skills requirements as well as relationships, board structures and the behavioural balance on the board.

The continual refreshment of the board via re-appointment and re-election is crucial. Our guidance will call for a step change in approach to ensure that large and highly complex boards are ensuring their ongoing maintenance of board capabilities, commitment, and contribution.

Understanding a proportional response

Although we have defined three levels of maturity for each process, we do not align a ‘best practice’ label to the most mature approach. Therefore, it is important to understand the overall contextual pressures and the actual and expected outcomes for each board before assessing the most appropriate procedural approach. Indeed, the advice given by company secretaries and governance professionals to the chair should concentrate on a proportional response to the board’s position.

For example, a board that has heavy founder presence is likely to be on a longer journey to the most mature levels compared to a heavily regulated UK bank, which would be expected to be delivering to higher maturity levels. In some maturity maps, we have also specified different approaches for dominant shareholder NEDs or group NEDs where approaches differ significantly.

Further research

In early 2025, we will launch our *Board Behavioural Dynamics Guidance* for consultation. Our guidance will detail the individual maturity maps and the resultant maturity matrix. Our research programme believes that all boards are on a path to maturity in how they enable behavioural dynamics and, as part of the wider research programme, we will be exploring the maturity journey as part of chair and SID interviews.

AI transformation matrix for board governance

Boards need to be ready to evolve if they are to harness the benefits of AI.

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Boards of directors are entrusted with setting the strategic direction for, and ensuring long-term success of, the organisations that they oversee. Historically, this responsibility has been guided by human intuition and experience. However, with the rise of **AI** technologies, boards now have access to advanced tools enabling faster and more informed decision-making.

AI applications in board governance are multifaceted, ranging from predictive analytics for risk management and talent optimisation, to compliance automation and operational efficiency enhancement. However, to make the most of this transformation, boards must adapt their operational models and upgrade the skillsets of their members.

As businesses undergo digital transformation, boards are being urged to reconsider traditional governance models and embrace AI-based tools to better navigate modern business complexities. This necessitates a new skillset among board members. Traditional expertise in areas such as legal, finance and industry knowledge must now be complemented by digital literacy, data analytics capabilities and an understanding of AI technologies, alongside cybersecurity awareness and change management expertise. Board members also need a foundational knowledge of AI and machine learning to make informed decisions and evaluate AI-driven insights.

Understanding and interpreting data is crucial for leveraging AI systems effectively. This includes the ability to assess data quality and recognise potential biases in AI algorithms. With AI integration comes an increased need for robust cybersecurity strategies to protect sensitive data and prevent cyber threats. AI implementation requires cultural and operational shifts within organisations, which is where the need for board members with change management expertise arises.

Operational changes in AI integration

The integration of AI into board governance is far from a plug-and-play process. It demands a fundamental shift in how boards operate. Boards can use AI tools to simulate scenarios, assess outcomes and make data-driven decisions, reducing reliance on intuition or historical precedents. Real-time updates on **KPIs**, financial data and market trends

ensure that board members are always equipped with up-to-date information. AI-powered tools can automatically monitor regulatory changes, assess compliance risks and flag potential issues for review, reducing the burden on board members and ensuring the organisation remains compliant with relevant laws and regulations.

Organisational restructuring

AI is prompting a restructuring of traditional board functions. Certain organisations are establishing AI committees within their boards to oversee the implementation of AI technologies and ensure alignment with strategic goals. These committees are typically composed of members with the relevant expertise, allowing the board to maintain oversight while leveraging specialised knowledge.

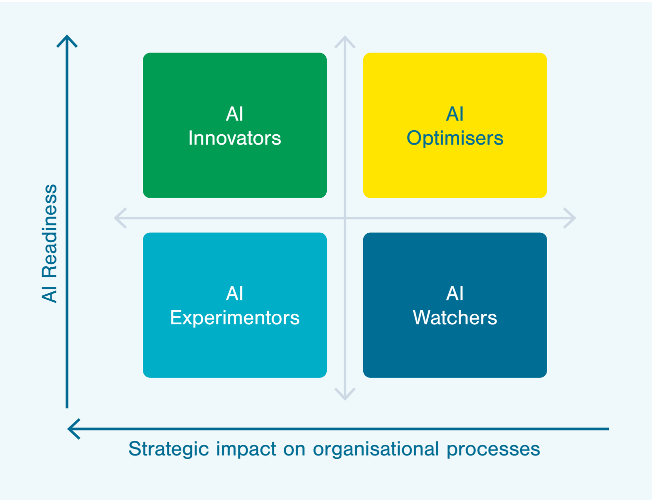
AI facilitates more dynamic and collaborative decision-making within boards by enabling real-time communication and information sharing. This collaborative approach can help boards to respond more effectively to emerging risks and opportunities.

AI's integration into governance will require boards to rethink recruitment strategies. Boards will need members with digital expertise and a deep understanding of AI technologies, leading to a more diverse pool of candidates from various industries and sectors.

> “
> **Boards must ensure AI systems are audited for potential biases**

Introducing the AI transformation matrix

As organisations embark on their AI journey, they fall into several categories based on their level of AI readiness and the strategic impact AI is expected to have on their operations. We developed the AI Transformation Matrix, a tool designed to guide organisations through their AI adoption journey, helping them identify their current stage and areas for growth.



The matrix categorises organisations by four groups:

AI innovators: high AI readiness, high impact

Tech giants such as Google and Amazon have advanced AI capabilities and have integrated AI into operations to drive innovation and transformation.

AI experimenters: low AI readiness, high impact

Companies in retail using AI for personalised customer experiences exemplify this category. These organisations are in the early stages of AI adoption but stand to gain significant impact by scaling successful AI projects.

AI optimisers: high AI readiness, low impact

Manufacturing firms using AI for predictive maintenance are examples here. They leverage AI primarily to enhance existing processes, focusing on improving efficiency and optimising workflows rather than driving radical transformation.

AI watchers: low AI readiness, low impact

Small businesses or firms in slow-adopting industries fall into this category. Their focus is on building AI literacy and planning for future investments, with limited AI implementation at present.

This matrix serves as a strategic guide, helping organisations to assess their position and identify the necessary steps to advance AI readiness and maximise its impact.

Challenges and opportunities

The integration of AI into board governance presents numerous opportunities but also brings challenges. One of the most significant challenges is cultural resistance. Many boards are accustomed to traditional decision-making processes and may be resistant to AI-driven change. Overcoming this resistance requires strong leadership, clear communication and ongoing education and training.

Another challenge is ensuring AI tools are built on unbiased, high-quality data. If the data used to train AI systems is biased, the decisions AI generates will reflect those biases. Boards must be vigilant in ensuring their AI systems are regularly audited for potential biases.

Despite these challenges, the opportunities are immense. AI enables boards to make more informed decisions, improve operational efficiency and navigate the complexities of modern regulatory environments. By leveraging AI technologies, boards can drive long-term growth and innovation.

Governance transformation

The transformation of board governance through AI is both inevitable and necessary. As AI technologies continue to advance, boards must adapt to remain competitive and effective in their oversight roles.

However, this transformation is not without its challenges. Boards must prioritise talent development, cultural change and the adoption of new operational models to ensure that AI is used effectively and ethically. Tools like the AI transformation matrix can guide organisations through this journey, ensuring that they are well-prepared for the future of AI-driven governance.

Boards that successfully integrate AI into their governance structures will be better equipped to navigate the complexities of the modern business landscape. By harnessing the power of AI, they can enhance decision-making, streamline operations and drive long-term success. This transformation must be approached with care, ensuring that AI is implemented ethically and that boards are equipped with the skills and knowledge needed to oversee its use effectively.

- You can find out more about Ashley Brangaza's work at the **Centre for AI: Social and Digital Innovation**

SPOTLIGHT ON:

Economic Crime and Corporate Transparency Act

Changes introduced in the Economic Crime and Corporate Transparency Act (ECCTA) will help to ensure that the data held on the Companies House register is more accurate and transparent. The changes will place some new demands on governance professionals and their boards, who may need support in getting to grips with the new requirements.

How ECCTA changes the game for fraud risk management

This article will examine the steps organisations can take to ensure that they do not fall foul of the Act in the future.

Failure to prevent fraud – what you don't know could hurt you

When it comes to fraud, organisations can no longer rely on ignorance or intentional indifference to avoid criminal prosecution.

ECCTA 2023: corporate criminal responsibility

What do companies and senior managers need to know about corporate criminal responsibility under the ECCTA?

ECCT Act – an opportunity for governance professionals

Governance professionals can support companies to meet the requirements of the ECCT Act.

Corporate transparency change coming to the UK

A reminder of the changes that will be incoming with the Economic Crime and Corporate Transparency Bill 2022–23.

ECCT Act: Who's affected and how?

Summarising the changes that the Economic Crime and Corporate Transparency Act will bring in and highlighting those who are most likely to be impacted by the reforms.

'A coffee chat with my board chair turned into a recommendation to top recruitment firms'

Ese Nkadi FCG shared her experience of moving to Canada from Nigeria just a few months after she arrived. Now that she's settled in, we caught up with her to see how things are going.

INTERVIEW BY HOLLY BENSON

FORMER EDITOR OF GOVERNANCE AND COMPLIANCE

Established readers of G+C may remember our conversation with Ese Nkadi in the July/August 2023 edition, where she shared her experience of transitioning her life – and governance career – from Nigeria to Canada.

For those unfamiliar with her story, Ese is a qualified Nigerian lawyer who became a Chartered Governance Professional in 2011 through CGIUKI (then ICSA). Her career in governance flourished, culminating in a role as Executive Director at Stanbic IBTC Trustees, a subsidiary of Standard Bank in Nigeria, before she made the bold decision to move to Alberta, Canada with her family. When we spoke last year, Ese was just a few months into her Canadian journey, navigating the challenges of settling into a new country, finding a job, and building her professional network. So how has her journey progressed.

The road to fellowship and career success

One of the first things we wanted to know was how Ese's membership with CGI Canada was going. Despite maintaining her Fellowship status in Nigeria, and transferring her

Associate membership from the UK to Canada, it was clear that her extensive experience merited more. A LinkedIn connection with Christine Carter, a CGI Canada Board member, who recognised Ese's experience and passion for governance, lead to Ese's successful recommendation and acceptance as a Fellow of CGI Canada.

However, the job search took longer than anticipated – ten months, to be exact. Ese is now proud to hold the position of Corporate Governance Director at the Alberta Dental Association. Moving from financial services to association governance, she has embraced the opportunity to expand her expertise in this new sector.

Overcoming the job market challenge

Ese is candid about her experience of job-hunting in Canada: 'I applied for several governance roles, only to be told I was overqualified or that the organisation had decided to move on with another candidate,' she says. 'It was getting frustrating.' Despite this, she continued to hone her governance skills as a volunteer board member of the McDougall House Association, a 'second-stage' residential addiction treatment facility for women. The connections she made there proved invaluable in her job search. 'A coffee chat with my board chair, Sheila Smigarowski, turned into a recommendation to top recruitment firms. This ultimately led to the opportunity at the Alberta Dental Association,' Ese recalls.

Initially offered a temporary Executive Assistant role, Ese was confident that her experience could bring significant value to the organisation – value they hadn't yet recognised. As the role evolved, she found herself in a strong position to negotiate. 'I realised the chief executive wanted me on the team because of my skill set, so I renegotiated and secured the title of Corporate Governance Director,' she explains. This role encompasses supporting the CEO and corporate office, as well as overseeing governance, legal, HR and risk functions.

Embracing the challenge and growing

Now fully immersed in her role, Ese finds that while the job can be demanding, her ability to negotiate her title, salary and benefits has made those demands manageable. 'If I'd settled for a more junior role, I might have started to resent the workload,' she says. 'Now, I don't have those conversations because I landed the right job and work with an amazing team.'

As if her plate weren't full enough, Ese is also completing a two-year diploma as part of her journey to becoming a Chartered HR Professional, further expanding her skill set. 'In governance roles, it's essential not only to appreciate the value of good governance but also to possess the skills and mindset needed to support various functions, especially in small teams or startups,' she says.

Ese's background in law, financial services, and her experience with two previous startups have proven invaluable in her current role, as her employer is a growing organisation. She is now a member of the Canadian Society of Association Executives (CSAE) and plans to attend her first CSAE conference in October 2024, with thoughts of pursuing a Chartered Association Executive designation. 'Canadians love their designations; it's a seal of credibility,' Ese notes, with a smile.

> **"Be ambitious... be open to moving into new sectors and expanding your knowledge**

Words of wisdom for aspiring relocators

Does she have any advice for others looking to relocate with their governance qualifications? Ese emphasises the importance of curiosity and self-advocacy. 'There's no one-size-fits-all recipe for success,' she says. 'Be ambitious and bold. Everything might not happen right away, but have a roadmap to get where you want to be.'

Ese also stresses the importance of financial preparation, as it can take time for things to fall into place: 'I was fortunate to have savings, which gave me the power to turn down some roles. If you're considering going abroad, prepare not only in terms of education but also finances.'

Her additional recommendations include:

- Active networking: 'Build connections in your new country through social media and in person.'
- Continuous Learning: 'Be open to moving into new sectors and expanding your knowledge.'

Ese's journey is far from over. While the transition hasn't been easy, her proactive and positive attitude has paid off. Follow her on LinkedIn (scan the QR code) to stay updated on where her career takes her next.

Doing good the right way

A business or individual can pursue positive social impact by setting up a charitable foundation. But there are some common pitfalls – so it pays to plan ahead.

ROBERT NIERI
LEGAL DIRECTOR, SHOOSMITHS

NICK SLADDEN
PARTNER, HEAD OF CHARITIES AT RSM

SHARON MONTEITH
ACCOUNTING AND FINANCIAL REPORTING DIRECTOR AT RSM

Setting up a charitable foundation is just one way to achieve positive social impact. (In a separate article available on the G+C website, we highlighted some considerations for businesses or individuals when deciding if this was the best course of action – or whether to pursue other available options to achieve that aim.) On the basis the decision has been made to establish a foundation, and before any action is taken, it's worth exploring some of the common governance challenges we come across when advising clients on setting up and running their foundation.

To start with the obvious, a charitable foundation is a registered charity like any other, so its trustees should be mindful of recurring pitfalls such as conflicts of interest and loyalty, unauthorised trustee benefits, use of funds for non-charitable purposes and a failure to document decision-making.

A key facet of many charitable foundations is a strong continuing relationship with their founders, but it is important for their governance to nurture and safeguard their operational independence. This independence is a fundamental characteristic of all charities, which should be run by their own board of trustees in what those trustees – and they alone – consider in good faith to be the best interests of their charity's purposes.

In turn, charities that are run independently should avoid or mitigate the governance risks that are commonly encountered by charitable foundations established by businesses.

The relationship between founder and foundation is akin to the parent-child dynamic at the time when children may have flown the nest, perhaps having started further education. This is the beginning of independence, when young adults begin to forge their own path and are no longer beholden to house rules. At the same time there is unlikely to be a clean break and there will probably be issues to be negotiated along the way – most pressingly, the question of how much money the 'Bank of Mum and/or Dad' will provide each month to supplement a student loan.

Delivering operational independence and alignment

At first it may be difficult to recruit any trustees to a new foundation who are entirely unconnected with the founder, but the ideal is to have independent trustees on the board.

When concluding its regulatory compliance case into the Jim Ratcliffe Foundation in 2023, for example, the Charity Commission noted that all the current trustees of the charity were employed by companies to which Sir Jim Ratcliffe was connected. To avoid any perception that this might cause bias or lack of independence, the trustees agreed to take steps to appoint at least one trustee who was not employed by a company connected to Sir Jim – but to reach quorate decisions foundations may need to have more than one

> **"Charity governance should nurture and safeguard its operational independence**

'independent' trustee on their board.

In practice there are degrees of independence. The managing director or owner of a business setting up a foundation may become a charity trustee, but they will not be able to take part in decisions whenever there is the possibility of a material conflict of interests or loyalty between the foundation and the business. There may be a reduced risk of potential conflict if less-senior employees of a business become trustees, although it should still be acknowledged that any employee will have a vested interest in the business: the preservation of their own job. To strike the balance between independence and alignment, businesses will often reserve rights to appoint trustees who may be currently unconnected with the business.

Before registering a charity, the Commission is likely to require sight of the draft of a written agreement or protocol between business and foundation, setting out the nature of the business's support. There can be obligations on both sides, but the intention should be to set out expectations and guardrails to preserve the foundation's integrity.

There is a requirement to disclose in the financial statements 'the policies and procedures for the induction and training of trustees,' and it is the trustees who are charged with preserving the flame of independence. Ultimately, the trustees need to understand their responsibilities and that acting in the best interests of the charity is paramount.

Deciding on a foundation's voting membership will determine the extent of ultimate control. Some businesses are the sole voting members of 'their' foundations and, like the trustees, will owe a fiduciary duty to act in its best interests. Others may retain influence, if not ultimate control, by preserving the right to appoint trustees who themselves are the only voting members of the foundation.

Managing conflicts of interest

Having a conflict of interest doesn't mean trustees have done something wrong, but conflicts do need to be managed properly when they arise.

Strategies for managing conflicts include:

- ensuring all trustees complete and maintain declarations of interest
- standard agenda items to declare such interests
- implementing conflicts policies and adhering to relevant provisions in the foundation's governing document
- delegating certain decision-making to subcommittees where an entire board is conflicted
- ultimately applying to the Commission for authorisation of a conflict.

Acting outside a foundation's charitable purposes

Many charitable foundations will have very wide charitable purposes because they are grant-making only. Others will have specific charitable 'objects' (a statement of its purposes), in particular where they 'do' as well as 'give' by commissioning or undertaking programmes of work. Whatever the charitable purposes, it is important for trustees to stay within their mandate and not become guilty of mission creep.

Foundations shouldn't succumb to pressure to support causes which are outside their scope because that support would be in the interests of the business. This is why trustees should be familiar with their charity's objects and the detail of its governing document. The business could always directly support these causes itself.

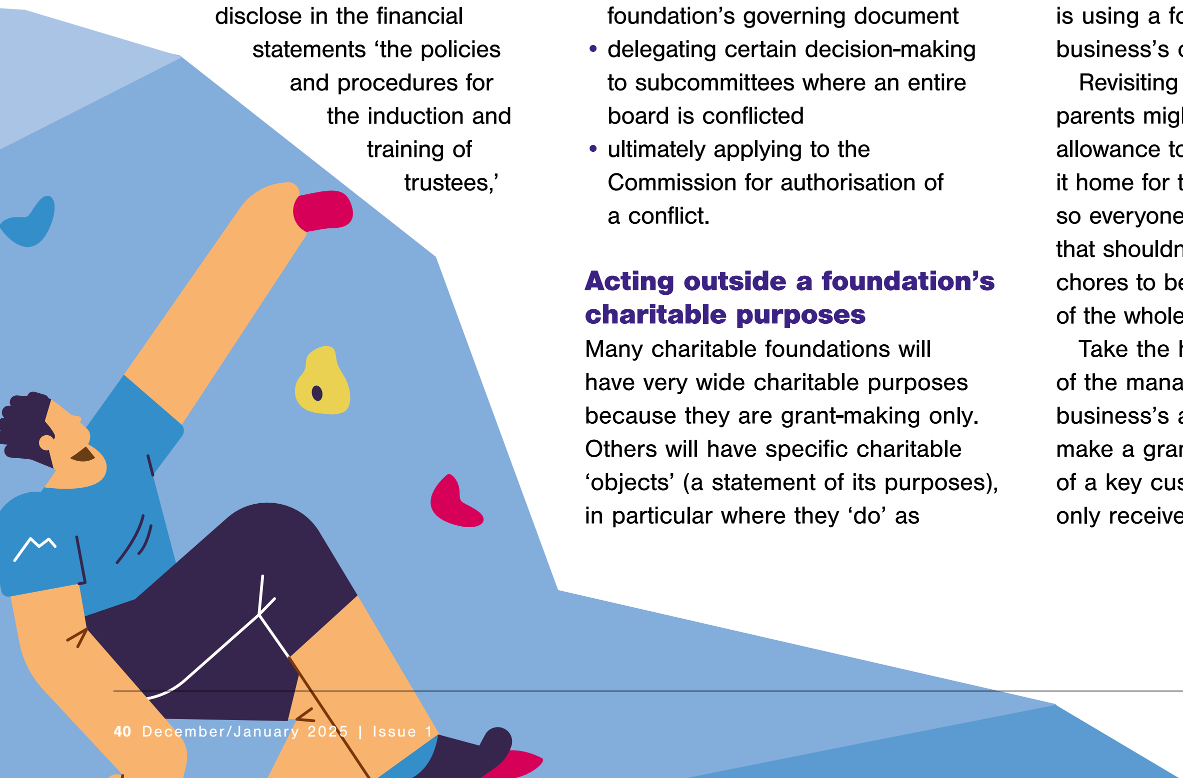
If times change and there are good grounds to alter a foundation's objects, then the appropriate application to alter them can be made to the Commission but this should be before and not after the foundation has broadened its remit.

Public versus private benefit

We have covered some of the motivations of businesses for setting up a foundation, many of which may not be altruistic. These less altruistic – but still perfectly acceptable – motives may include staff recruitment and morale, and customer loyalty garnered by association with the good works of a foundation. What is not acceptable is using a foundation to advance a business's objectives.

Revisiting our parent-child example, parents might give their children an allowance to enable them to make it home for the Christmas holidays so everyone can be together – but that shouldn't be in return for a list of chores to be completed for the benefit of the whole family.

Take the hypothetical example of the managing director asking a business's associated foundation to make a grant to a favourite charity of a key customer. A business can only receive private benefit from the



work of a foundation if that benefit is no more than ‘incidental’. This means making sure that any personal benefits people receive – having regard to the nature and the amount – are no more than a necessary result or by-product of carrying out the purpose. In our example, the business would be seeking to use the foundation to maintain the goodwill of its customer base.

Even if making that grant would advance the foundation’s charitable objects, the trustees would have to be very careful about their decision-making, and how it was documented. In the circumstances, they might conclude that the likely private benefit would be more than incidental and so support ought not to be given.

Trustees need to remain aware of their responsibilities and be prepared to educate their supporting business about the limits of what the charitable foundation can and cannot do. A grant-making policy may be a useful aid here. Where grant-making is a significant activity, a policy would be expected with a requirement for the policy to be explained in the trustees’ annual report. In addition, foundations should be measuring and communicating their impact, not just outcomes, on an ongoing basis for each year in that report.

Blurring of the lines

A business may think that it can hold out a foundation’s achievements as its own, reasoning that this is permissible because it supports the charity with funding and in-kind support – administration, IT, volunteers, and so on. But this is not allowed: the impact of a foundation is for the foundation alone to trumpet.

This is why, at the stage of charity registration, the Commission will want to ensure a business makes clear on its website that a foundation is a separate, independently operated entity even if the business can proudly set out the support it has given.

Again, any written agreement setting out the scope of support by the business to the foundation should provide clarity about what can justifiably go into the business’s end-of-year ESG or corporate responsibility report.

Such an agreement will help the charity understand the level of support it will need secure externally, and to estimate the value of the support it is receiving – something they are likely to need to include as a ‘gift in kind’ in their financial statements. Where a business is providing services to the foundation, it can be the case that the charity finance and administration falls quite far down their priority list, so the charity has to ‘make do’ with what it can get. Furthermore, charity finance, administration and governance are very different to the corporate world. Often teams in the business are unaware of the differences so may not be able to provide all that is needed.

Running out of steam?

A well-known animal welfare charity coined the phrase, ‘*A dog is for life, not just for Christmas*,’ and the same could be said about charitable foundations. The road to hell is paved with good intentions, and a burst of enthusiasm to do good doesn’t compensate for a lack of forethought and careful assessment of what will be addressed by a new foundation – and precisely how it is going to implement change.

Mike Tyson said that ‘everybody has a plan until they get punched in the mouth’, and while long-term sustainability may not be quite that dramatic, understanding from the outset that a foundation will need adequate resources, and the ongoing motivation of a group of capable committed trustees and volunteers to carry it out in the face of challenges, is key to robustness – as is a suite of implemented polices to provide an adequate governance framework.

Worth it in the end

By now you may be thinking that it simply is not worth the trouble to establish and run your own charitable foundation. But we hope that by highlighting the strategies and principles that can help trustees navigate the bumps along the way, it remains clear that the journey itself will likely be rewarding – and the end goal of positive change that makes a tangible difference to the fragile world that is our only home is surely worthwhile for sustainable businesses.

- Read Robert Nieri’s previous article on mechanisms to achieve positive social impact on the G+C website.

Charities' clarity on governance

The Charity Commission has been working hard to make its guidance more accessible to trustees. Better governance and compliance around key areas for trustee decision-making is the prize.

MAZEDA ALAM
HEAD OF GUIDANCE AND PRACTICE AT THE CHARITY COMMISSION

In recent years, charities have been put under pressure in ways that few could have predicted. The effects of the pandemic and subsequent cost-of-living crisis, for example, have forced change on charities and presented risks they may not have experienced before. At the same time, emerging technology has afforded opportunities for some, but also a new set of considerations for others. What has remained unchanged is the importance of ensuring good governance, and thereby continuing to earn the trust and confidence of the public on whom charities are reliant. At the Charity Commission, we regularly see how poor governance practices can lead to problems.

CGI members know governance is about a range of skills, behaviours, attitudes, and activities. It is leaders inspiring their organisation to deliver on its aims and purposes, putting into place what is needed to do so. It is about leading the organisation now – and preparing for its future.

These considerations apply equally to charity trustees, with the added requirement of complying with charity law and the Commission's regulatory expectations. Consequences for failing can include public criticism and media attention, as well as regulatory intervention. The Commission has supported them in getting it right by providing comprehensive guidance on a range of governance and other topics. However, we are aware that too few trustees use our guidance to help them undertake their leadership roles.

This year our research indicated that just 26% of trustees use the Commission's information at least once a year. Most trustees ask a colleague or another trustee for advice in preference to Commission support – despite research showing that those who use our guidance have a better understanding of their responsibilities and how to meet them.

Trustees said the length and style of our older guidance can put some people off. In fact, much of our guidance was primarily written for print – whereas people regularly access it on phones or tablets now, a very different experience.

So we have been working to update our guidance by using plain English, improving clarity, and cutting down reading time. Trustees who read our refreshed guidance will more easily understand the legal requirements and good practice. Furthermore, in 2024 we have focused our attention on refreshing our guidance in four key governance areas.

Financial difficulties

The Commission sees the sector's financial resilience and sustainability as a key current risk. Many charities have faced a triple threat from increased running costs, greater demand for their services, and falling income.

We also know that managing financial difficulties is not easy and can be personally stressful. Our refreshed guidance on this topic aims to help trustees prepare by having sound financial governance in place. This also means trustees can spot difficulties early, which gives them a better chance of making changes and avoiding insolvency.

Decision-making

Our old guidance here was based on seven key principles developed by the courts when they reviewed decisions made by charity trustees. These principles also underpin our revised guidance, making it easier for trustees to confidently know what is expected of them in law when they make decisions. The guidance explains clearly what each principle means, with extra pointers on, for example, the importance of keeping a proper record of decisions (which can help trustees deal with criticism) and managing disagreements.

> **“Trustees who read our refreshed guidance will more easily understand the requirements**

Holding charity meetings

It is now common for charities to conduct meetings online. Our revised guidance reflects this development, emphasising the importance of making sure trustees comply with their charity's governing document – and changing it to permit online meetings if it does not already – with additional provisions, such as how votes will be held at such meetings. It also recommends trustees consider policies that cover behavioural expectations and technical issues. For example, how people ask questions, or what would happen to the meeting if there were technical glitches.

Governing documents

Our guidance on this topic was refreshed earlier this year to reflect changes that came into effect through the Charities Act 2022. Trustees of all charities now have the power to make changes to their charity's governing document, but there are legal rules that apply. For some changes, the Commission's authority is needed first.

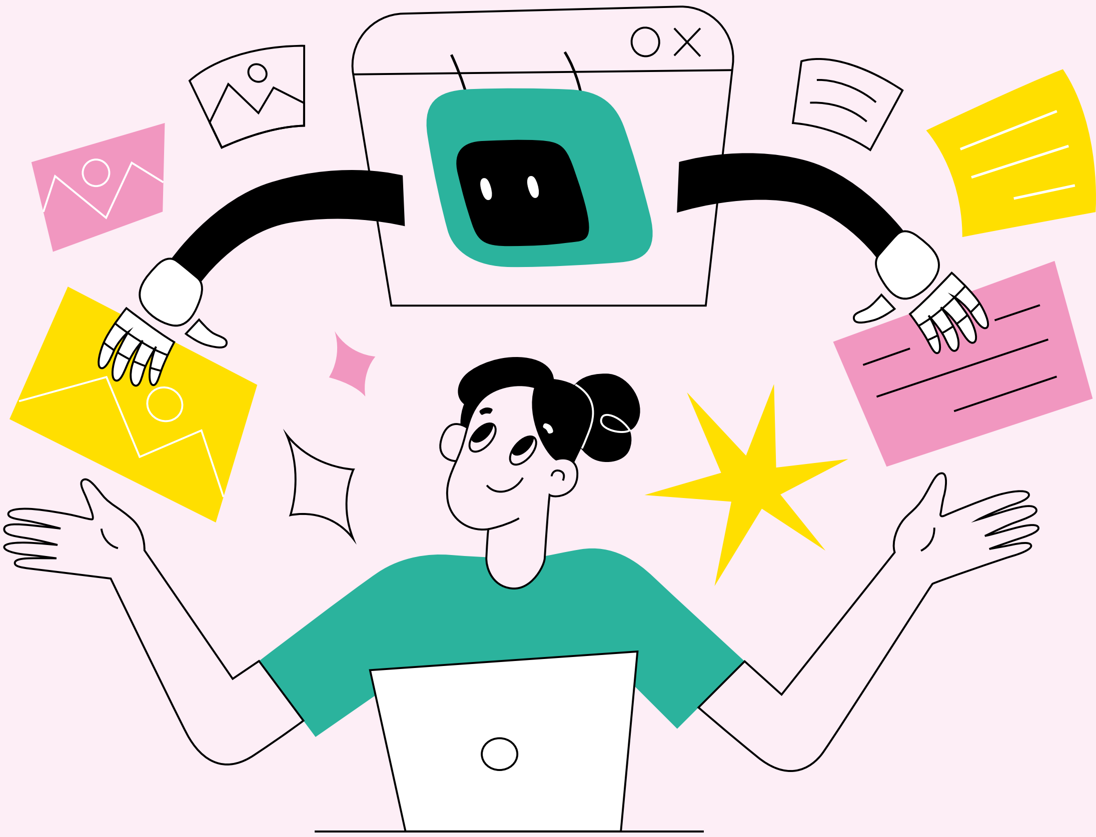
Trustees should review their governing document to make sure they have the rules for sound governance. For example, changing rules around the number of trustees your charity must have if the mandated number in your governing document is no longer appropriate because, for example, it is too high or too low.

The value of being a trustee

As governance professionals, many of you will already be charity trustees and aware of your duties in the role. You may already be aware of the great rewards that serving as a trustee can bring. If you are not, please do consider volunteering your time and expertise to the charity sector. It's not always easy, but it offers a unique opportunity to make a real difference for a cause you care about.

You can read more about the role of charity trustees and access a suite of the accessible guides at the Charity Commission web site, or scan the QR code for its new five-minute video guides.

Best practice minutes



in an AI age

AI-powered transcription services are getting more accurate all the time. But is it wise to take the output and allow another AI to prepare meeting minutes as well? For Megan Pantelides, the answer is yes – with plenty of caveats.

MEGAN PANTELIDES
EXECUTIVE DIRECTOR, RESEARCH,
AT BOARD INTELLIGENCE

Few tools in the modern governance professional's toolkit date back to Ancient Rome, but shorthand is one of them. Developed by Marcus Tullius Tiro in 63 BC to record the speeches of Cicero, it's still considered an essential skill by many company secretaries. And with the most experienced practitioners able to record up to 200 words a minute, it's easy to see why: few other tools help us to record meeting minutes as quickly and accurately.

Shorthand is an essential time-saving trick for governance teams who are managing the huge volume of work created by meeting minutes. After two millennia, can new technologies like generative AI (GenAI) finally change things? Or should governance professionals hold onto their pens, and keep polishing their shorthand skills, for a little longer yet?

What are 'best practice' minutes?

'Best practice' meeting minutes are not easy to produce. As the definitive record of board and committee meetings, they must be accurate, timely, and written in the right tone. They must capture the nuance and subtlety of the discussion to satisfy legal requirements; but without turning into a transcript that's impossible to digest easily and parse for important decisions and actions. This can be a tricky balance to strike.

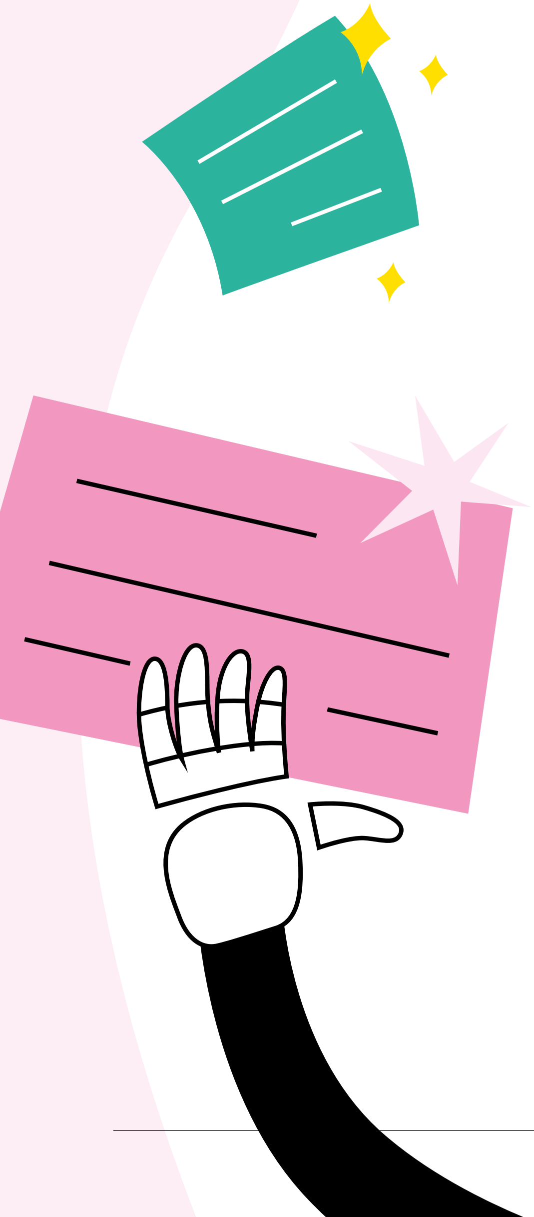
The guidance available online is consistent enough about what 'good' looks like, and a few key pieces of advice stand out:

- There's no such thing as 'one size fits all'. Tailor minutes to your organisation and industry rather than follow a fixed template.
- Don't write for regulators. Include the information that will help your board perform well, not what you think will appease the regulator – because doing the former will achieve the latter.
- If a new director could read the minutes and understand the 'what' and 'why' of decisions, you've got the balance right.

As clear as the advice may be, juggling all of this is not easy – even when you can record 200 words a minute in shorthand... or produce a transcript at the push of a button, as is now the case. In addition to a lot of elbow grease, good minutes require a combination of technique, knowledge and judgement that can take years to master. It's as much an art as it is a science.

It's also hugely time-consuming. Data we've gathered from more than 50 governance teams shows that it takes 10 hours to produce a high-quality set of meeting minutes for the average board or committee meeting (rising to 17 hours for the largest companies' meetings). That equates to between two and five hours' work

> **We need to redefine what we mean by 'best practice' to focus not only on quality, but also on efficiency**



for every hour of meeting time. And the task seems to be falling on those members of the team whose time is already stretched most thin: on average, senior governance professionals are doing 60% of the work required to produce each set of signed-off meeting minutes.

What we've heard loud and clear from governance teams is that delivering best practice minutes comes at significant monetary and opportunity cost. As one governance professional told us, 'The amount of time we spend on this is enormous, I'm having to do it on a Sunday evening because there's just not enough time to do it justice during the week. It's unsustainable.'

What's the solution?

Given the importance of minutes, it's clear that the quality bar isn't going to drop any time soon – and nor should it. No regulator is going to accept less accurate, less nuanced, or less rigorously written minutes simply because governance teams are overstretched.

That doesn't mean we can't make that burden lighter, however. To do that, and set governance teams up to succeed, we need to redefine what we mean by 'best practice' to focus not only on quality but also on process and efficiency. It's only by thinking about excellence differently that we can start to equip governance teams to deliver high-quality minutes without the pain.

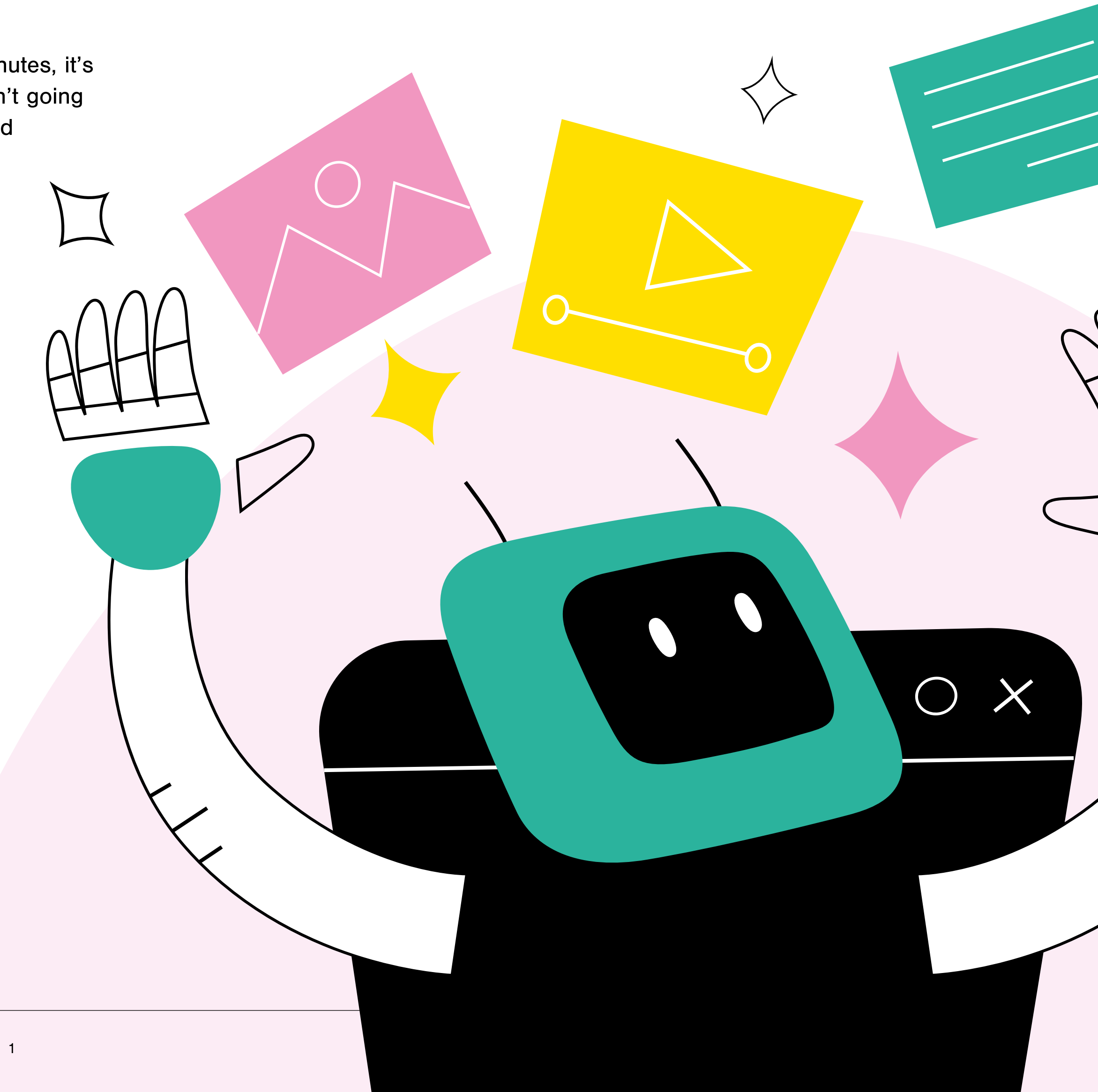
What's AI got to do with it?

Knowing what we already do about AI raises a glimmer of hope. Its abilities to summarise or spot patterns in text, and automate manual tasks, notably, make it seem like it might be one of those technological innovations that really will help to reduce the minute-writing burden, just as shorthand and word processing did in decades past.

It's not without its challenges – even when taking the potential privacy and data risks aside. How do we know? Because we've spent the past year building an AI-powered minute-writing tool. And in that time, we learned that not all AI tools work in quite the way you want them to, or deliver the results you expect.

We thought we'd start by seeing what the available off-the-shelf AI tools could do. So we tested some general-purpose generative AI tools, using publicly available content. At first, we were impressed. But looking more closely, we saw some problems.

- Important details were missing. The minutes missed things in the transcript, like the headline figure on financial performance, for example. These were things that a company secretary just wouldn't overlook.
- Things had been added. The models clearly had some knowledge of the industry from their pre-training, and some of them added plausible quotes into the minutes that were not in the transcript. These sentences



had been lifted from the tool's 'memory' and inserted as if they were said in the meeting.

- The quality dropped as the transcript progressed. AI tools struggle with longer texts, and the quality and accuracy dipped dramatically at the 40,000-word mark (which is only half of the wordcount you might be working with after a four-hour meeting).

Getting good results was clearly not going to be as easy as asking a general-purpose chatbot to turn a meeting transcript into minutes. Hence our decision to build our own solution — a purpose-built tool that would give a company secretary control over the steps in the process, the inputs, and the outputs, while addressing security and privacy concerns.

When we did this, we found that making a few small changes to the design and function of the tool made a huge difference in terms of delivering high-quality minutes efficiently – such as picking the right tasks, for example.

"

AI tools could be a powerful enabler of governance teams if built with care

Applying AI only to the steps in the process that didn't require human levels of judgement delivered much higher-quality results. That meant we had to break the process down into its component steps and think carefully about the human input required to perform each one. Multi-step prompting also had a significant impact, so we had to build the tool to perform one task at a time rather than trying to do everything in a single step.

Perhaps most importantly, we also introduced multiple checks and balances — sense-checks to ensure users 'own' the output throughout the process. When a task requires as much judgement, knowledge, and skill as writing minutes does, it's vital that the professional stays in the driving seat. Introducing these sense-checks made it easier for governance professionals to keep hold of the keys from start to finish, and deliver minutes they, and their board, could stand by.

Is it worth it?

The use of shorthand may be in decline, but there's a reason why so many governance professionals still place so much value on it — it's a symbol of the skill, tact and professionalism with which they approach their work.

As we hurtle into the AI age, it's tempting to try to automate much of that work away. 'Best practice' minutes, which deliver excellence in terms of both quality and process, might be a step too far for some AI tools, but they could be a powerful enabler of governance teams if built and used with care to automate some of their minute-writing work and augment the rest.

Considering the enormous investment of time and effort that's required to deliver an annual calendar's worth of meeting minutes, and their importance to boards and regulators, I think most governance professionals would agree that it's worth it.

Megan Pantelides is Executive Director, Research at Board Intelligence, the UK's largest board technology and advisory firm. Trusted by more than 70,000 leaders across the Fortune 500 and FTSE 100, Board Intelligence supercharges boards with the science of board effectiveness.

‘I like to describe governance as a company’s relationship with the world’

Alexandra Wildeman, Guernsey Governance Professional of the Year 2024, shares how she found her passion in governance and is paying it forward by empowering others to succeed.

INTERVIEW BY HOLLY BENSON
FORMER EDITOR OF GOVERNANCE AND COMPLIANCE

Tell me about your career and current role as an Assistant Manager at Ocorian?

It’s been an incredible journey of growth and opportunity. I moved to the UK from Hungary in 2020 and joined Ocorian in 2021 as a Trainee Fund Administrator. Initially, I focused on working with venture capital and private equity clients, but I gained experience in the company secretarial team. This variety of roles has been invaluable in shaping my skills and understanding of governance.

I progressed to Senior Fund Administrator, then to Assistant Manager. Ocorian supported me in pursuing professional development through the CGI qualifications. I’m currently preparing for my final Level 5 exam and hope to continue to a master’s degree in governance. The support I’ve received has been instrumental in helping me grow.

How have you found studying the IFA?

The CGI qualification has been transformative. It’s not just about gaining technical knowledge – it has boosted my confidence in meetings and improved my financial English, which is essential in my role.

What I find particularly rewarding is how the qualification complements my team dynamic. My manager is ACCA-qualified, and I bring governance expertise to the table. Together, we combine accountancy and governance skills to deliver the best outcomes for our clients.

I love CGI's inclusivity. It offers a second chance for people who may not have had the opportunity to attend university due to financial or personal circumstances – like me. I've seen others in their 40s and 50s successfully pursuing this qualification – it's never too late to start.

What do you enjoy most about your work?

The best part of my job is the people. Through my involvement with the CGI Branch in Guernsey, I've had the privilege of meeting and learning from incredible professionals. Building those connections and gaining insights from others has been both inspiring and invaluable to my career.

What's the most challenging part of your job?

One of the big challenges is helping people understand the importance of governance. It is often seen as an extra step, but I like to describe it as a company's relationship with the world. It's not just about compliance; it's about creating frameworks that support an organisation's success.

It can be a challenge to translate that value to clients, but I see it as an opportunity for communication. Once people understand how governance can drive results and contribute to revenue, the process becomes collaborative and impactful.

Your award nomination mentions establishing key controls and oversight frameworks. Tell us more.

Early in my career, I realized that understanding the "why" behind our work is just as important as the "what." As a trainee, I often followed instructions without knowing the broader context. I wanted to change that for others entering the field.

I developed tools such as checklists and processes to help new team members understand not only how to complete tasks, but also why those tasks matter. These frameworks reduce the likelihood of errors and empower trainees to feel confident and informed. It's about creating an environment where knowledge-sharing is integral to success.

Your citation also mentioned your relationship-building. What's your advice on doing that well?

I believe the foundation of any good relationship is making people feel heard. It's the small, thoughtful gestures that make a difference – like following up on a personal detail someone shared.

Even in a corporate environment, building genuine connections is essential. If you establish trust and show you care on a human level, it's much easier to build a productive, collaborative relationship. Combine that with strong governance knowledge, and you create a partnership that works seamlessly.

What are the key skills for work in governance or fund administration?

At Ocorian, we often say, 'There is no skill called attitude.' Attitude is the one thing you cannot teach, and it makes all the difference. If someone has the right mindset, they can achieve anything with the right support.

How do you feel about the Governance Guernsey Award? What are your hopes for the future?

I feel so honoured and grateful. This award is a reflection of the support I've received from my colleagues at Ocorian, the CGI community, and my IFA tuition provider. I've been fortunate to have mentors who believed in me and shared their knowledge generously, and I want to do the same for others.

I'd love to apply my governance expertise in a mission-driven organisation, perhaps in the charity sector. One of the things I value most about governance is its versatility – you can take these skills into any industry and make a difference.

Another goal is to help others access the same opportunities I've had. If I meet someone with the right attitude and ambition, I want to support them, even if they don't meet every traditional requirement. Giving people a chance to build a career they deserve is something I'm passionate about, and I hope to continue paying it forward.

"One of the things I value most about governance is its versatility – you can take these skills into any industry

Do NED roles still stack up?

The evolving role of NEDs is forcing some to ask whether the balance of risk, expectations and rewards still makes sense.

TANYA GASS
PARTNER, BOARD PRACTICE, NORMAN BROADBENT PLC

In the ever-changing landscape of corporate governance, the role of **NEDs** has undergone a significant transformation. Once viewed as a comfortable retirement gig for post-executives, the NED position has evolved into a central pillar of corporate strategy and oversight. However, this expansion of responsibilities has brought with it new challenges in recruitment and retention, forcing boards to reconsider their approach to NED engagement and compensation.

The expanding NED portfolio

Today's NEDs are expected to wear many hats, contributing expertise in areas as diverse as corporate culture, consumer relations, workforce engagement, technology, sustainability, and corporate reputation. This shift from mere reassurance to active participation in strategy development has placed unprecedented demands on NEDs' time and skills.

The latest iteration of the UK Corporate Governance Code underscores this trend, introducing a new attestation requirement effective from 2026. Boards subject to, or following, the Code will need to sign off on descriptions of their risk management and internal controls framework, declare the effectiveness of their material controls, and describe any controls that have not been applied. This heightened level of accountability reflects a broader awareness of business risk in a decade marked by global upheavals, including a pandemic, supply chain disruptions, soaring inflation and geopolitical instability.

A war for talent

Given the critical importance of NEDs in today's corporate landscape, the recruitment of top NED talent is becoming a greater priority for companies of all sizes. However, new research by executive search firm Norman Broadbent Plc, in partnership with BDO, shows that boards are struggling to attract and retain top talent. A staggering 96% of boards admit to challenges in finding the right NED talent to provide that all-important value add. Moreover, 25% of boards report needing more NEDs, while 29% find attracting NED talent difficult due to the unfavourable risk/time/reward ratio.

This recruitment crisis is perhaps exacerbated by the growing scrutiny of NED activities – and inactivities – by regulators and the public alike. High-profile corporate governance failures, such as the Carillion collapse, have highlighted the reputational risks faced by NEDs in an era of increased transparency and accountability.

The risk reward ratio

As boards grapple with finding NEDs who can provide industry knowledge and strategic advice, the question of appropriate compensation becomes increasingly pressing. The answer, in most cases, is that NEDs are not being adequately rewarded for their expanded responsibilities and increased risks.

While FTSE 100 **CEOs** enjoyed an average £500,000 pay rise in 2022 – a 16% increase from 2021 – NEDs in the UK's largest 150 listed companies received an average basic pay of £72,052 in 2023, up marginally from £70,785 in 2021. This disparity has led experts to conclude that NED remuneration is not commensurate with the time and responsibility expected of them.

The dissatisfaction with compensation is particularly acute among NEDs in listed companies and the public sector, highlighting the risk-reward imbalance for those facing the highest levels of accountability. The financial services sector is an exception, with most NEDs expressing satisfaction with their pay – likely reflecting higher compensation to account for the personal regulatory risks they face.

The overboarding dilemma

As the demands on NEDs intensify, the concept of 'overboarding' – where directors hold too many board positions simultaneously – becomes increasingly relevant. With each NED role now requiring significant time and attention, the traditional metrics for determining an appropriate number of board seats are being reassessed (as Ruth Sullivan explains on page 12).

Institutional investors and proxy advisors have developed sophisticated guidelines to evaluate overboarding. For instance, Institutional Shareholder Services (ISS) uses a points system where executive director roles are assigned three points, non-executive chair roles two points and NED roles one point. A total score of five or less is generally considered acceptable, while anything above may be flagged as overboarding.

This quantitative approach acknowledges the varying time commitments of different roles and provides a framework for assessing a director's capacity. However, it also adds another layer of complexity to the recruitment process, potentially limiting the pool of experienced NEDs available to boards.

Charting a path forward

To address these interconnected challenges, boards must take a holistic approach to NED recruitment and retention. This may include:

- reassessing compensation packages to better reflect the expanded responsibilities and risks of the NED role
- considering innovative remuneration structures, such as equity compensation, to align NED interests with long-term company performance
- providing clearer expectations around time commitments and workload to help NEDs manage their portfolio of commitments effectively
- investing in ongoing training and support to help NEDs navigate the increasingly complex regulatory and business environment
- carefully considering the balance between experience and overboarding when making board appointments.

As the role of NEDs continues to evolve, so too must the approach to recruiting, retaining and supporting these critical corporate governance figures. By addressing the current imbalances in risk, reward and responsibility, boards will be better placed to ensure they have the talent and expertise needed to navigate the challenges of the modern business landscape.

Overcoming leadership disconnect

A recent report finds a mismatch between perceptions of company culture that needs to be addressed to keep organisations resilient, transparent and ethical.

TY FRANCIS MBE
CHIEF ADVISORY OFFICE OF LRN

The 2024 *LRN Code of Conduct Report* sheds light on a significant risk organisations face today: a mismatch between leadership and frontline employees regarding perceptions of corporate culture. This 'leadership disconnect' is not a new phenomenon, but the report's findings highlight its ongoing impact on workplace trust, ethical behavior, and long-term business success. Addressing this issue is essential for companies that aim to foster a unified, transparent and ethical environment where every employee feels heard and valued.

The leadership disconnect: what the numbers reveal

'Leadership disconnect' refers to the disparity between how senior leaders perceive corporate culture versus how frontline employees experience it. LRN's findings reveal a sharp divide: while 90% of senior leaders believe their organisation follows the code of conduct, only 69% of frontline employees share this sentiment. (Among middle management, often caught between these two groups, 81% of respondents have faith in their codes.) This stark contrast underscores a systemic issue that can erode trust, lower morale, and reduce employee retention if left unaddressed.

Even more concerning, the report highlights that 88% of senior leaders claim to speak regularly about their organisation's code of conduct, but only 58% of frontline employees report the same experience.

This indicates that communication about ethics and compliance is often diluted or lost as it trickles down the corporate hierarchy. Additionally, executive leadership is 2.6 times more likely than frontline employees to say their organisation has a strong ethical culture – a significant gap that reveals a potential misalignment of values and expectations. This brings the 'tone from the middle' conversation to the forefront.

The costs of disconnecting

When leaders are disconnected from employees, it becomes difficult to maintain a cohesive ethical culture. The LRN report identifies several risks stemming from this leadership gap.

1. **Undermining 'speak up' cultures:** employees may feel concerns are unheard or disregarded, deterring them from reporting misconduct or sharing feedback, eroding the foundation of a transparent, accountable workplace.
2. **Decreased morale and retention:** frontline employees who feel ignored or undervalued are more likely to disengage, leading to higher turnover and recruitment costs – and the eventual loss of institutional knowledge.
3. **Inconsistent ethical standards:** when employees perceive that leaders aren't held to the same ethical standards, it creates a sense of injustice and unfairness that can diminish trust and loyalty across the workforce.

Bridging the gap

The good news is that there are steps organisations can take to overcome the leadership disconnect.

Promote transparency and accountability across all levels

Leaders at every level must be held to the same ethical standards as their employees, and should be open about decision-making processes. This fosters trust and helps create a culture of 'psychological safety', where employees feel empowered to speak up without fear of retaliation.

Psychological safety is often driven by two factors: leadership modeling and organisational justice. Leaders who encourage teams to share ideas, learn from mistakes, and behave ethically contribute to a 'safe' environment, the LRN report says.

Establish clear communication channels for feedback

Frontline employees and middle managers need clear, accessible avenues to provide feedback to leadership. These mechanisms should allow employees to communicate concerns and suggestions directly, without the message being diluted as it moves through the hierarchy.

The LRN *Benchmark of Ethical Culture* report emphasises that fear of retaliation, skepticism about whether action will be taken, and uncertainty about who to contact are common reasons why employees don't report misconduct.

Invest in training and development

Ethical behavior must be ingrained in every layer of the organisation. The LRN report indicates that managers are often the first point of contact for reporting ethical concerns, which means they play a critical role in the culture. Equip them with the skills to foster ethical behavior, address misconduct and encourage dialogue.

Regular training on ethics and compliance should be a priority, for every employee, tailored for different role profiles. This reinforces the importance of ethical behavior and ensures everyone understands how company values are applied.

Regularly assess ethical culture

Organisations should regularly evaluate their ethical culture through employee surveys, focus groups and external benchmarks. This allows decision-makers to identify gaps in perception and take prompt action.

For example, LRN found 33% of respondents had observed misconduct, but not all felt able to report it. By monitoring trends, companies can address the root causes of disconnect.

Opportunity for growth

Organisations that recognise and tackle these gaps can transform their ethical culture, fostering a sense of integrity and shared responsibility. Implementing strategies to close them can turn a weakness into a strength, building a culture that is resilient, ethical and aligned with core values.

Download the report at: lrn.com/resources/code-of-conduct-report

The start of a new ERA?

The introduction of the Employment Rights Bill is a landmark moment for the new Labour government. While not as sweeping as its manifesto suggested, several measures will need careful monitoring as the Bill progresses.

PAUL MCFARLANE
PARTNER AT
CAPSTICKS SOLICITORS LLP

In October the government introduced the Employment Rights Bill, hailed as the beginning of the first phase of its plan to 'Make Work Pay'. The Bill has been touted as the biggest change to employment rights in a generation. The overall aim is to improve employment standards and workers' rights. It is argued that the changes can improve working lives, leading to economic and social benefits.

Overall, while the proposals are indeed widely regarded as being a major change, they do not go as far as the Labour manifesto suggested. Employers should keep a close eye on the proposals and progression of the Bill ahead of its passing as the Employment Rights Act. But note that many of the proposals will be subject to consultation, and are due to supplemented by additional regulations and codes of practice. Others will be the subject of the legislative process – and are not expected to come into effect for at least a year. Some, such as the unfair dismissal provisions, are not due to come into force until 2026.

Key proposals in the Bill

Unfair dismissal rights from day one

It has been proposed that the right to bring a claim for unfair dismissal will be a day-one right rather than requiring a qualifying period of two years as is currently the case for 'normal' unfair dismissal claims. Linked to this, the government is also going to consult about implementing a statutory probationary period, likely to be nine months, during which a 'lighter touch' shortened dismissal process would enable dismissals in circumstances where employers believe the appointment is not working out. The detail of this remains to be seen, but it is envisaged that it will give rise to a greater focus on an employee's performance and behaviour in the early stages of their employment.

Currently it is not anticipated that any changes will be made to unfair dismissal law until Autumn 2026.

Zero-hour contracts

Although it had been reported that zero-hour contracts would be banned, the Bill suggests a slightly watered-down version of this step: the right to a guaranteed number of hours based on a worker's usual hours assessed over a reference period of 12 weeks. There would no obligation for a worker to agree to a varied contract, recognising that in some cases flexibility suits both workers and employers alike. It has also been confirmed that true short-term temporary contracts will not be required to be made permanent.

Fire and rehire

There has been some controversy over the vilification of P&O Ferries following their mass 'fire and rehire' process, used to implement a large-scale change to employee terms and conditions. The Bill looks to significantly reduce the ability of employers to alter terms and conditions of employment if employees do not agree to the changes. It is proposed that dismissals intended to assist in effecting a change of terms and conditions will be automatically unfair if certain conditions are met.

There are likely to be exceptions, such as when an employer is in serious financial difficulties and cannot reasonably avoid the change in terms and conditions. 'Serious' is considered to be in danger of insolvency. If this is the case, it could then be decided by a tribunal whether the dismissal was fair in all the circumstances.

Harassment protection

The Bill includes a number of suggested provisions to increase protection against sexual harassment, building on the recently introduced requirement to take reasonable steps to prevent sexual harassment in the workplace. How this will work in practice, given the recently updated EHRC Technical Guidance, remains to be seen. Further, disclosures relating to sexual harassment will be protected as qualifying whistleblowing disclosures, bringing them in line with whistleblowing.

Family and gender-related proposals

In line with other provisions to give employees further day-one rights, it is proposed that employees will have the right to unpaid parental leave and statutory paternity leave with no applicable qualifying period. Bereavement leave will likewise be a day-one right. There will also be stronger protection against dismissal for pregnant employees and family leave returners as well, as part of a package of 'family friendly' rights.

Future steps

There are some omissions in the Bill that had been mooted as areas for legislative change prior to the election. A number of these are covered in the government's 'Next Steps' document. It is suggested that there will be a consultation redefining the term 'worker', likely to result in the removal of the distinction in status between workers and employees. Other areas of employment law that are under the spotlight for review are TUPE, carers' leave and parental leave.

A separate proposed act, the Equality (Race and Disability) Bill sets out the government's plans for large employers (250 employees or more) to report ethnicity and disability pay gaps, similar to the requirement which already exists in the context of gender.

Elsewhere... Dismissal for behaviour linked to autism was discriminatory

In a recent Employment Tribunal (ET) case Mr Wright v Cardinal Newman Catholic School, the Respondent was found to have discriminated against the Claimant on the grounds of his disability, victimised him and unfairly dismissed him.

In summary, the facts of the case are that over a period of five years, the relationship between the parties had deteriorated as a result of the Claimant supporting a colleague's victimisation claim against the Respondent, a disciplinary process related to absence and multiple subsequent grievances made against members of the leadership team.

During this period the Claimant was diagnosed with autism. The Respondent and Claimant entered into mediation to enable the Claimant to return to work. The Claimant was unhappy that he was not returning to his role as head of department but to a lesser role, albeit temporarily. When this unhappiness was expressed, the Respondent concluded that the employment relationship had irretrievably broken down and dismissed the Claimant.

> **"Sound and fair reasons for dismissal must not be tainted**

The ET concluded that this was not the reason for dismissal and that the real reason was the Claimant's persistence in complaining, continual raising of grievances, submitting subject access requests, and the manner in which he did so – all of which were linked to his autism.

Whilst the ET's initial decision was in 2021, financial remedy was only decided in September 2024, with the Claimant being awarded £860,000 in total for unfair dismissal, injury to feelings, loss of earnings, personal injury and legal costs.

This case is a salutary reminder that employers should ensure that in cases where it is considered that there are grounds of dismissal, a sound and fair reason is identified which is not tainted by disability discrimination. In this case, as the behaviours exhibited by the Claimant were linked to his autism, this brought into play the protection afforded to disabled workers under the Equality Act 2010.

Protection of beliefs and English Nationalism

In the recent case of Thomas v Surrey and Borders Partnership NHS Foundation Trust, the **EAT** considered the competing rights of individuals who express beliefs.

The EAT confirmed that whilst English Nationalism could be a protected characteristic for the purposes of the Equality Act 2010, the Claimant's beliefs were not. They were extreme – he considered that Muslims should be forcibly removed from the UK and Islam had no place in the UK. Those beliefs were not worthy of protection, and his appeal was rejected by the tribunal.

Bad day for Big Tech?

The European Commission's decision in the Google comparison-shopping case has been upheld – along with a €2.4 billion fine. What are the ramifications for big tech, competition enforcement, and the future of digital markets?

ROBERT BELL
CONSULTANT AT
ARMSTRONG TEASDALE

On 10 September 2024, the European Court of Justice (ECJ) delivered a landmark ruling in the long-running antitrust battle between the European Commission and Google LLC and Alphabet Inc. The ECJ dismissed Google's appeal and upheld the European Commission's original decision to fine the tech giant €2.42 billion for abusing its dominance in online search by favouring its own comparison-shopping service over those of competitors, thereby violating Article 102 of the **TFEU**.

This case marks a pivotal moment not just for Google but for the broader regulation of digital markets and the future of European competition law.

The Google case

The case began in 2017 when the Commission found that Google had engaged in anti-competitive behaviour by systematically giving preferential treatment to its own comparison-shopping service within its general search results. Competitors were pushed down in search rankings, making it harder for them to attract clicks, reducing traffic and revenue.

The Commission concluded that Google had used its dominant position in the search engine market to disadvantage rival services in 13 **EEA** countries. In 2021, Google appealed the decision to the General Court, the European court of first instance. The Commission's decision was largely upheld. Google then took its appeal to the ECJ which gave final judgement on 10 September 2024, citing:

- **Refusal to supply/discriminatory access.** The ECJ dismissed Google's argument that the Commission should have analysed this as a 'refusal to supply' case and applied the conditions set out in the leading case of Bronner. Bronner related to circumstances in which a smaller rival was seeking access to a dominant rival's infrastructure. The ECJ agreed with the General Court, concluding that the Bronner criteria were not applicable. The ECJ confirmed that where a dominant undertaking gives access to its infrastructure, but makes that access, provision of services, or sale of products subject to discriminatory conditions, the Bronner conditions do not apply. They are only applicable when there is a complete refusal to give access.
- **Competition on its merits.** The ECJ found that the General Court had not erred in finding that Google's practices deviated from 'competition on the merits'. As a rule, where a dominant undertaking treats its own products or services more favourably than those of its competitors, this does not necessarily mean that its conduct departs from 'competition on the merits'. However, in this case, the General Court correctly established that, in the light of the characteristics of the market and the circumstances of the case, Google's conduct was discriminatory and did not fall within that scope.

There are no further avenues of appeal for Google, so this judgement ends a fight against the Commission's ruling spanning some eight years.

Ramifications for big tech

The ECJ ruling sets an important precedent for the tech industry. By upholding the Commission's stance on self-preferencing, it sends a clear message that dominant platforms cannot use their market power to disadvantage rival users of their platforms or to distort competition in adjacent markets. This ruling strengthens the Commission's approach to policing 'self-preferencing', a central issue in many Big Tech cases involving companies such as Apple, Amazon and Meta.

This decision reinforces the **EU**'s commitment to curbing anti-competitive behaviour in the digital economy and adds momentum to the ongoing regulatory scrutiny of Big Tech. Companies with significant market power may need to reassess their business models, particularly if they rely on integrating or promoting their own services over third-party providers.

Impact on enforcement

The ECJ's judgment validates the European Commission's long-running pursuit of antitrust violations in the tech sector and affirms the legality of its approach in tackling self-preferencing. The ruling emboldens the Commission to pursue similar cases against other dominant firms, knowing that its methodology has been upheld by the highest European court.

This case was a tremendous victory for the Commission. However, it has had mixed success when it comes to taking on Big Tech. For example, on 16 September, the General Court annulled the Commission's infringement decision against Google for abusing its dominant position in the online search advertising intermediation market via its AdSense business, setting aside a €1.5 billion fine. We will wait to see if the Commission decides to appeal.

> **"The DMA will become the primary tool for regulating Big Tech**

The Google Shopping victory and the AdSense reversal raise the question of whether the EU's traditional antitrust tools, such as those in Article 102 of the TFEU, are still the best instruments to regulate digital giants.

The Google Shopping case's lengthy proceedings – spanning almost a decade – also raise concerns about the efficacy of competition law in addressing fast-moving digital markets, where prolonged legal battles may not adequately resolve competitive harms in a timely manner. The AdSense judgement also shows the formulaic nature of competition law and how procedural and evidential errors in such a framework can set back – if not fatally compromise – the provision of timely remedies in digital markets

Will the Digital Markets Act (DMA) take the limelight?

The EU's recently adopted **DMA** may render traditional competition law enforcement less central. The DMA is designed to address many of the same anti-competitive behaviours seen in the Google Shopping case but in a more preventive and faster-acting manner. It imposes ex ante obligations on designated 'gatekeepers', such as Google, requiring them to follow specific rules, including bans on self-preferencing, without waiting for lengthy investigations or legal proceedings.

With the DMA in place, many of the challenges that the European Commission faced in the Google Shopping and AdSense cases – such as proving market dominance and quantifying anti-competitive effects – may be avoided. This could lead to swifter enforcement and quicker resolutions, providing faster relief for affected competitors and consumers. While competition law will remain important, it is likely that the DMA will become the primary tool for regulating Big Tech in the EU.

Effects on smaller rivals and users of Google's services

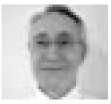
For smaller competitors in the comparison-shopping space and other adjacent markets, the ruling provides hope for a more level playing-field. The decision shows the EU is serious about preventing dominant platforms from exploiting their positions to the detriment of rivals. This could encourage innovation by assuring smaller players that they will have fair access to the market and not be unduly disadvantaged by tech giants. For consumers, the ruling could lead to more diverse and competitive digital markets, though the effects may not be immediate. If enforced effectively, the judgment should ensure that consumers are presented with unbiased, merit-based search results, giving them better access to a wider range of services.

Conclusion

The dismissal of Google's appeal is a major victory for the Commission and a landmark moment in the regulation of digital markets. It strengthens the hand of regulators as they scrutinise Big Tech companies and enforce the principle that dominant firms must not abuse their market position.

An important tax tip... tax on tips

Companies now face a more stringent approach to handling tips and other gratuities. Using a tronc may be the best way to demonstrate compliance – and save on NICs.



RUSSELL COCKBURN
INDEPENDENT TAX CONSULTANT
AND FORMER INSPECTOR OF TAXES

One of the most important recent legislative changes, which is likely to have very significant implications for many businesses operating in the service and hospitality sector, is the enactment of the Employment (Allocation of tips) Act 2023 which came into force from 1st October 2024. Any business where employees receive tips or gratuities need to be aware of this legislation's significance and the implications for the way it handles payments received from customers and paid on to employees.

The broad impact of the new rules is that it is now illegal for the employer to withhold any amount of tips or gratuities, and also service charges, from their employees. An employer is obliged to hand over to its employees all the tips that come to the employer in any workplace during the course of the employees' work. The statute also provides that when handing the tips on to the employees, the employer must do so by means of a *fair and transparent method of distribution*.

Many employers already have this sort of approach in place, of course, and deal with tips fairly. The legislation aims to broaden this out to all employers, so that the perception of unfairness that persists in some business sectors, especially hospitality, is removed and employees receive the full amount of their earnings.

Spend and tax

These provisions will also bring back into focus the way many businesses handle tips for PAYE purposes, and the potential income tax implications for employees. The key compliance obligations for the employer are (1) to put in place a fair and transparent method of distribution and allocation of tips among employees; and (2) ensuring their tips policies are clearly documented. It will also now be a requirement that all tips are distributed by the end of the calendar month following their receipt.

Tips for employees are taxable income, of course. While some employees may not realise this (or perhaps choose to ignore it), it is a principle of UK tax law long established by case decision precedents. This means that historically an employee who received their tips directly from their customer – i.e. where the tips did not pass through the hands of the employer at all – still had an obligation to declare them as income personally to HMRC. In many cases this may not have happened, to the detriment of the Exchequer. This was one of the reasons why the existing PAYE regulations imposed a requirement for the employer to deduct tax and National Insurance contributions (NICs) where they handled the tips and made the distribution to the employees.

Tronc calling

Many employers choose to deal with this taxing mechanism via the establishment of a 'tronc'. This collects tips from customers, then shares them out fairly to employees, administered by someone who is supposed to be independent of the employer. The main benefit of a tronc system is that tips are exempted from NICs – but not income tax. This highlights the chief implication under the new legislation that an employer will have to get to grips with: to tronc or not to tronc?

A tronc system's NIC savings for both the employer and the employees – where the tips had been declared to HMRC – make it seem very attractive. But for some employees, the initial favourable reception they are likely to give to the new rule may be tempered somewhat when tips that they had perhaps been hitherto receiving tax-free, direct from their customers, are now subjected to income tax because they have been declared.

It will also be important to ensure those 'transparent and fair' arrangements for distribution and allocation of the tips. One of the most important features of a tronc is that the individual in charge (the 'troncmaster') can be seen to be genuinely independent of the employer, complying with the 'fairness' requirement of the Act itself.

If this is not clearly met then such a failure could mean that when HMRC carries out a payroll inspection of the business (and I feel it can be expected that HMRC officials will make checking compliance with these new rules a top priorities over the medium term), this could lead to the imposition of NIC liabilities which would clearly undo the benefits of the tronc – and might also trigger interest and penalty charges in larger cases.

Act now, but act wisely

Any hospitality business where the employees do receive tips, or even where there is just a likelihood that this can occur, will need to have these

> **To fail here may bring the risk of additional tax and NIC liabilities**

arrangements in place as soon as possible – if they have not already done so. Where there is currently no tronc arrangement, early consideration should now be given to establishing one as soon as possible. While the legislation itself does not actually impose a requirement for the employer to go this route, it seems almost inevitable that in future HMRC is going to expect to see one – or the employer will need to be able to provide it with a very solid reason for not doing so.

This raises a specific issue with regard to businesses where the employer does not currently have any involvement in the receipt, allocation and then distribution of tips at all. What, for example, will the position be for employees in a business who receive their tips individually direct from their customers? I have to admit that in the past (being, perhaps, overly cognisant of the tax and NICs position) when I gave a tip in a restaurant I have always handed it to the server personally rather than put it in the pot by the till or add it on to my credit card payment. I have wondered whether or not the employee would be declaring the tip for income tax purposes; and perhaps the cynic in me concluded that this may have been unlikely. But I also allowed myself a small element of smugness that by giving the employee their tip personally I was facilitating them not having an NIC liability! NIC liability under the PAYE regulations arises when an employer makes a *payment* of earnings to an employee and as I am not the employer PAYE cannot apply.

But going forward what should the employer do in this situation? Should they continue and run the risk that HMRC may object to the continued use of this sort of structure in the future? While it does not seem that the new legislation imposes any actual obligation on the business to change, it will be a brave employer that does not do so when HMRC will clearly be expecting a business of any size, especially those where tips are a significant element of the employees' pay, to have a tronc in place.

Top tip: document it all

For peace-of-mind, employers will (a) seek to bring their systems up to date in the light of the new legislation; and (b) seek to obtain the NIC advantages offered by a well-managed tronc.

It will also be important to be able to demonstrate to HMRC that they are not just compliant with this new legislation, but that their documentation is watertight. There will need to be fully drafted and clearly understood policies and procedures laid down and made known to all employees on how the tips are to be allocated; and how and when the tips are to be distributed after income tax has been deducted.

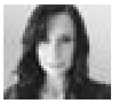
A well-organised employer will do all this because to fail here may bring the risk of additional tax and NIC liabilities owed to HMRC. It can now also be much easier for the employee, or group of employees, to take action against their employer before an Employment Tribunal. As is often the case, good communication of the new arrangements will play an important role in facilitating good employee relationships as well as ensuring good tax and NICs compliance.

email: cockburnruss@gmail.com

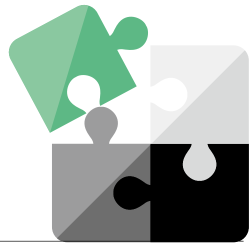
Section 172 – ready to report

A guide to drafting a meaningful section 172 statement.

BEN HARBER FCG
PARTNER AND HEAD OF COMPANY SECRETARIAL SERVICES, SHAKESPEARE MARTINEAU



CHLOE HIGGINS ACG
SENIOR COMPANY SECRETARY, SHAKESPEARE MARTINEAU



In an s172 statement, boards should assess how their choices advance long-term development while accounting for stakeholders' interests. Some important questions to ask include:

1. **How do we run the company for the benefit of all its members?**
   - Are the long-term interests of shareholders being prioritised?
   - How do we balance short-term profitability with long-term strategic goals?

2. **How do we consider the interests of employees?**
   - How do we promote employee engagement and wellbeing?
   - How are we fostering a culture that encourages diversity, inclusion and development?
   - Have we adequately consulted employees during decisions?

3. **How do we foster relationships with suppliers and customers?**
   - How do we build long-term partnerships with suppliers?
   - How is customer feedback incorporated into decisions?
   - What actions do we take to ensure fair treatment of all partners and stakeholders?

4. **What impact do we have on community and environment?**
   - How do we ensure sustainable and responsible practices?
   - What community or ESG activities are we involved in?
   - How is the environmental impact of decisions monitored?

5. **How do we maintain high standards of business conduct?**
   - What are our ethical standards and governance practices?
   - How do we ensure compliance with laws and regulations?
   - How do we foster transparency in our operations?

6. **How do we consider the need to act fairly between members of the company?**
   - Are the interests of all shareholders equally considered?
   - Are minority shareholders' rights protected?

7. **How do we manage and monitor risks?**
   - How are risks for stakeholders being mitigated and monitored?
   - Are we regularly reviewing stakeholder engagement strategies and their effectiveness?

The company secretary

The company secretary plays a vital role in ensuring board actions and decisions are documented and ready for inclusion in the annual report.

1. **Maintain a stakeholder engagement log.**
   Record all key engagements with stakeholders – including meetings, consultations, surveys and outcomes – to capture how they influenced board decisions. For example, how you introduced a new employee benefits package or modifying supplier contracts based on stakeholder feedback.

2. **Board minutes and decisions**
   Ensure that meeting minutes accurately reflect the discussions and considerations of s172 factors in decision-making. Track how

decisions were made with regard to employees, customers, the community and the environment, and how potential risks were evaluated.

3. **Annual review of corporate governance framework**
Regularly review and document how the company adheres to corporate governance standards. The secretary should ensure that the board is made aware of their s172 obligations throughout the year and not just when drafting the annual report. For example: you could provide annual training to directors on s172 responsibilities and ensure this is logged for future reference.

4. **Action plans and impact assessments**
Keep a record of action plans implemented based on stakeholder feedback and measure their impact. This data can be invaluable when drafting the statement. For example, if employees raised concerns about work-life balance, record the implementation of flexible working hours and assess how this affected employee retention or satisfaction.

5. **Document continuous improvements**
Track any ongoing improvements or initiatives tied to s172 concepts. This can include tracking environmental progress, community outreach efforts and customer satisfaction improvements. For exmaple, log improvements in sustainability metrics such as carbon footprint reduction that align with the company's long-term goals.

6. **Prepare a draft s172 statement**
Compile all relevant data, stakeholder logs and meeting minutes into a draft s172 statement. Ensure it aligns with other sections of the annual report, such as corporate governance, risk and sustainability disclosures. By maintaining a structured process for recording stakeholder engagement, decision-making processes and the board's considerations throughout the year, the company secretary can streamline the preparation of the s172 statement for the annual report, ensuring it is both comprehensive and reflective of the company's ongoing commitment to its stakeholders.

Stakeholder engagement log

A stakeholder engagement log is a structured document that records key interactions with stakeholders, noting outcomes and decisions and how these have influenced board deliberations. The log should be updated regularly as engagements occur and should reflect how stakeholder feedback has directly impacted company actions or strategy. The log should also document when and how the board was involved, linking decisions to specific engagements.

This log facilitates the drafting of the s172 statement and also ensures transparency and accountability in how the company manages its relationships with key stakeholders.

Examples of good s172 disclosures

Employee wellbeing and engagement
'The board prioritises employee engagement by conducting bi-annual staff surveys and implementing action plans based on the feedback. In 2023, we introduced a wellbeing initiative, which resulted in a 10% increase in employee satisfaction, as measured by the latest survey.'

Customer and supplier relationships
'We maintain long-term relationships with key suppliers by conducting regular reviews of supplier contracts to ensure mutual benefit. Output from our customer feedback portal has led to the development of three new product features.'

Sustainability and environmental impact
'As part of our commitment to reducing our environmental footprint, we transitioned 80% of our operations to renewable energy sources in 2023. This is aligned with our goal of achieving net-zero carbon emissions by 2030.'

Community engagement
'We launched a local community initiative which invested £500,000 in local education and housing projects. In 2023, 200 students benefited from scholarships sponsored by the company.'

Cusiness ethics and governance
'Our commitment to high ethical standards is reflected in the revision of our Code of Conduct, which was updated this year to incorporate stronger anti-bribery policies. All staff completed training on this new code.'

Risk management
'The board regularly reviews our risk management framework. In 2023, we identified supply chain risk as a critical area and developed contingency plans, which helped mitigate potential disruptions during a period of global shortage.'

Online exclusives

The G+C website is being updated all the time. Below is a selection of some recent articles – you can find all of these and more at **www.govcompmag.com**

The future of the company secretary

The governance professional of the future will need to be resilient and adaptable to fulfil their widening remit as an adviser to the board.

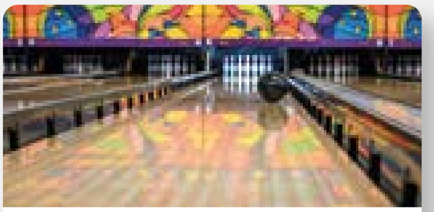
Jacques Colley FCG
Director at Horsepool Group

ESG is a victim of subject-matter expertise

For ESG initiatives to thrive, the need to be led by individuals with the right mix of specialist knowledge and broad business experience.

KPIs, KRIs and KCIs

Integrated indicators allow for stress testing of the organisation's strategic plans, risk management strategies and control frameworks against extreme but plausible risks.



Applying the Wates Principles in family firms

The application of the Wates Principles can provide guidance to help large private businesses to keep their governance on track.

Selling and cancellation of treasury shares

An explanation of the rules that apply to companies when selling and cancelling treasury shares.

John Mills FCG interview

John Mills, CGIUKI's joint Champion for Governance 2023, speaks about his efforts to raise the profile of his team and the profession for the benefit of the whole governance community.

Diversity is only part of the equation

Boards must ensure that all members are included and invited to participate in discussions if they are to reap the benefits of diverse perspectives.

Ruth Sullivan
Corporate Governance Journalist

Governance role challenges

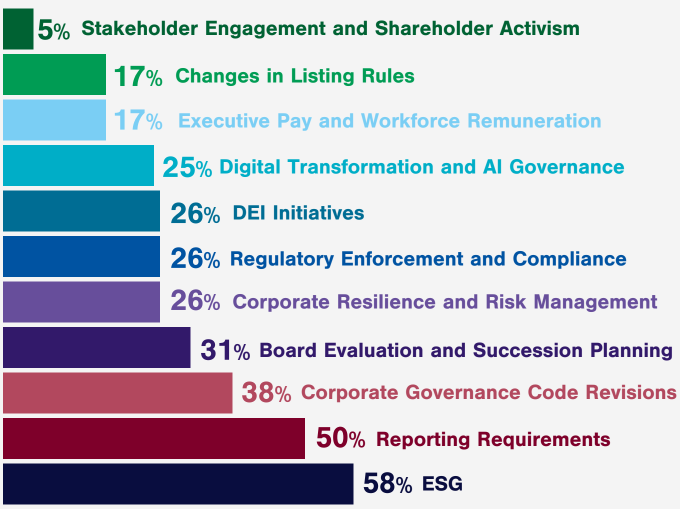
Conducted in association with The Core Partnership

This month we are looking at the challenges governance professionals are facing, with a focus on stretched teams and increased workload.

We first asked our audience which of the recent changes in the governance landscape has caused an increase in workload. The results are below – note that respondents could select multiple answers.

Next we asked, what do you think could be introduced to help with the increased workload? Respondents were clear: they need more support. Half told us they wanted 'additional permanent resourcing', marginally ahead of 'leveraging technology and automation' at 48%. But process seems to be on the agenda, too: 'increased collaboration within the team' was cited by 41%. Lower down the wish-list were 'bring in interim support' (20%), and 'outsourcing work' (at just 15%).

Which of the recent changes in the governance landscape has caused an increase in workload?



So, is your employer aware of the challenges? There is good news here: 78% of respondents said yes, with just under one-in-ten respondents saying 'no'. Perhaps more worryingly, 13% of respondents were 'unsure'.

On a scale of 1-10, how likely is your employer to help with the increased workload, we asked. The less-good news is that respondents delivered an average score of just 4 out of 10.

What has the impact of an increased workload had on your team? 65% cited 'increased stress and burnout', with almost as many adding 'difficulty meeting deadlines'. Unsurprisingly, 'need for additional resources' was a common response (41%); 17% told us workload has caused 'exits in the team'. And while four-in-ten claimed a positive effect – 'improved skills and adaptability' – for a quarter, 'reduced motivation' was a key impact.

Finally, what skills would be most desired to support your team? A varied shopping list here: Technical and Digital Proficiency (56%), Project Management (35%), Strategic Thinking (33%), ESG Expertise (32%), Change Management and Transformation (30%), Legal Knowledge (19%), Stakeholder Management (18%), Cultural and ED&I Awareness (9%), and Crisis Management (7%).

The Core Partnership's Governance Market Survey 2024-25 is available now! Email us below to request a copy.

If you are a company secretary or governance professional at a leading UK business and you would like to take part in or comment on future surveys email **team@core-partnership.co.uk**

Chartered Governance Institute UK & Ireland

Look back at what 2024 delivered

Another year of championing good governance and supporting the development of skills, values and effectiveness of governance professionals to drive better decision-making.

2,200+ delegates at face-to-face conferences

2,700+ students registered for the Qualifying programme exams

3,200+ registrations for branch events and branch workshops

280 Stakeholder meetings

59 Blogs published

55 Meetings with government or regulators

44 Speaking engagements

17 Guidance notes

15 Technical briefings

14 Consultation responses

8 Thought leadership pieces

Glossary

AI – artificial intelligence
ARGA – The Audit, Reporting and Governance Authority
CEO – chief executive officer
CFO – chief financial officer
CPO – chief people officer
DMA – Digital Markets Act
EAT – Employment Appeal Tribunal
EEA – European Economic Area
ESG – environmental, social and governance
EU – European Union
Exception paradox – “if every rule has an exception, then there must be an exception to the rule that every rule has an exception”
FRC – Financial Reporting Council
HR – human resources
IT – information technology
KPI – key performance indicator
NED – non-executive director
Net Zero – the goal to eliminate net carbon emissions from human activity
NIC – National Insurance Contribution
PSC – people with significant control
TCFD – Task Force on Climate-related Financial Disclosures
TFEU – Treaty on the Functioning of the European Union

Corrections and clarifications

Helen Baker FCG wrote in to clarify some points in the (otherwise very well-received) feature on apprenticeships in the October edition. Charlotte Woollven, the focus of the piece *A new path into governance* is actually part of the second cohort with one particular training provider (Clear Quality). ‘As there are now three training providers, it isn't right to talk about “cohorts” generally, but about cohorts with each training provider,’ Helen explains.

Then although Charlotte told us the scheme is ‘for people who don't have A levels or a degree’, it’s important to stress that the apprenticeship is pitched at Level 4, which is a level higher than A Levels (Level 3) and is equivalent to the first year of a degree. ‘And there is nothing to stop those with A Levels or a degree from undertaking an apprenticeship,’ Helen says.

Finally, we noted that the apprenticeship ‘consists of a series of modules completed over 12 months’ – when, we should clarify, this is not the case with every training provider. For example, CSA's course is delivered over 13-14 months.

New to governance and want to see your name in print?

Each year, the Institute runs the Tom Morrison Essay Prize – an opportunity to show us your new and original thinking on a tricky governance issue. If you’d like to be in with a chance of winning a £1,000 cash prize (plus £500 for the runner up), keep an eye out for the launch of the 2025 prize at www.cgi.org.uk/about-us/tmep/tom-morrison-essay-prize.

The submissions window will run from January to March, and we welcome essays of up to 2,500 words from students (CGI or otherwise!), graduates and governance professionals with a maximum of two years of experience.

Branch meetings

Irish region, 23 Jan, 8.15am (online)
The Companies Bill 2024... and other developments: Taking the expertise of an experienced Company Secretary, this event aims to provide an update on recent developments within the ever-changing landscape within which we operate.

North West branch, 28 Jan, 5.30pm (in person)
Economic Crime and Corporate Transparency Act 2023: This CPD event will be at Ernst & Young LLP, Manchester where Mark Buckley, Implementation Lead – Authorised Corporate Service Providers at Companies House, will provide an overview of the Economic Crime and Corporate Transparency Act 2023, including key timeframes and developments.

Yorkshire branch 18 Feb, 5.30pm (online)
Thinking about upgrading your CGI membership?: Are you a CGIUKI student or Graduate who would like to become an Associate and therefore Chartered? Or are you already Chartered but would like to become a Fellow? Our webinar will explore the benefits of CGI membership and progression within the Institute.

South West branch, 25 Feb, 5pm - (online)
The new Corporate Governance Code: The new C Code comes into effect 1 January 2025. What are the key changes? How will it impact boards? Will it mean additional work for the Company Secretarial teams? Or is the work already being done? Peter Swabey and the South West branch will explain all.

Chartered Governance Institute UK & Ireland

AWARDS 2024

The winners have been revealed

This year's Chartered Governance Institute UK & Ireland Awards took place on 5 November 2024 at the Royal Lancaster Hotel in London. As we approach the conclusion of another dynamic year, it was a delight to celebrate the work and achievements of companies, teams and individuals from across the governance field.

Once again, selecting winners from an outstanding pool of nominations proved challenging, thanks to the dedication of many individuals.

The winners and those that were highly commended are a testament to the exceptional talent, innovation, and commitment that defines our profession. It was an honour to see their accomplishments recognised on this prestigious occasion, and they made the judges' job hard with such a high calibre nominations.

Thank you to all involved, from nominators to judges, sponsors, and our members, for your outstanding contributions and commitment to the world of governance. Winners acknowledge the collaborative effort behind their achievements.

Congratulations to our outstanding winners!

Know someone deserving recognition? Visit CGIUKI's website in the spring for nomination details.
The next CGIUKI Awards will be held on **4 November 2025.**

Winners 2024

Remuneration Report of the Year
Severn Trent plc

The One to Watch
James Jones, Senior Consultant – Company Secretarial Services, Law Debenture

Board Performance Review Disclosure of the Year
Severn Trent plc

ESG Initiative of the Year
Merlin Entertainments

Sustainability Disclosure of the Year
SSE plc

Audit Disclosure of the Year
Derwent London plc

Team of the Year
Kier Group plc

Champion for Governance
Susan Fadil FCG – Senior Director Fund and Corporate Services, JTC
Wendy Stanger FCG, Director of Governance, East Coast College (Highly Commended)

Stakeholder Disclosure of the Year
SSP Group plc

Diversity & Inclusion Initiative of the Year
Law Debenture

Annual Report of the Year FTSE 250
Dr. Martens plc

Governance Project of the Year
London Stock Exchange Group – FX Governance Structure

Service Provider of the Year
ONE Advisory Limited

Annual Report of the Year FTSE 100
Severn Trent plc

Board Disclosure of the Year
Dr. Martens plc

Governance Professional of the Year
Alia Fazal FCG, Head of Corporate Governance, bp plc

Outstanding Achievement
David Styles, Advisory Board Member IoD Centre for Corporate Governance

Bespoke training

Chartered Governance Institute UK & Ireland

For those creating training programmes for governance professionals and teams

For new Board Members and trustees

For Lawyers and accountants supporting businesses of all sizes

Why choose bespoke training?

Providing bespoke in-house training is an opportunity to:

- offer quality sessions that are tailored to your organisation,
- teach practical knowledge and skills and apply them to real life situations,
- bring the whole team together,
- set the same expectations across the organisation,
- reinforce company specific procedures.

Why work with us?

Our network of trainers are top of their field because they have a unique mix of technical knowledge and personal experiences, from across every sector and jurisdiction.

Engaging closely with our clients allows us to pair them up with the right trainer for their needs and develop training solutions that result in long-lasting, positive change to the way an organisation works.

Our bespoke in-house training supports teams and boards of every size and is conveniently offered in-person or virtually.

Questions that bespoke training may help you answer:

- Do you wish to raise the standards of knowledge and practical applications within your board?
- Does your team want to assess how they can better support the board?
- Do you feel there's an area within your organisation's governance or board processes or knowledge that could benefit from the setting of a standard to impact the effectiveness of your organisation going forward?

If you've answered yes to one or more of these questions, we are here to help you.

Scan the QR code to visit our website and learn more

To book your bespoke training, discuss your organisation's needs and how we can support you, **please email Tara Wilson twilson@cgi.org.uk.**