

Building GC influence in the boardroom

Strategies for success



THE LAWYER
Research Service

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THE LAWYER
Research Service

The Lawyer is a leading title in the business of law. Aimed at the senior members of the world's top law firms, *The Lawyer* prides itself on serving its readers with breaking news, in-depth analysis and valuable research to help firms see the next business opportunity before the rest of the market.

A CHANGING ROLE IN AN ERA OF FLUX

If you are a General Counsel, you'll be used to a measure of unpredictability – the role itself is rarely the same in any two organisations, and the spectrum of responsibilities it covers is equally varied.

However, the current level and pace of change is unprecedented. This is one of the reasons we have been delighted to collaborate with The Lawyer's research team in conducting this survey. Now is a crucial time to be asking questions of what the GC role could, and should, deliver to businesses operating in the UK, and how to make the most of new dynamics in the boardroom. To get a 360-degree insight on what is going on, we have purposely trained the same line of questions not only at in-house lawyers, but also at directors and non-lawyer board members. It is in comparing the subjective perceptions of the two (often mutually exclusive) camps that some of the most interesting insights have arisen.

External challenges have of course multiplied for businesses in the last 5 years- with risk in particular being a major headline as the 'march of the regulators' accelerates. Not only is regulatory activity and the reach and power of the regulators expanding on a global basis, but the technological building blocks upon which all of our clients' businesses are based have given rise to a new level of threat – cyber being at the top of most corporate risk agendas. If you layer over this the fact that most businesses operate in, and are judged against, an increasingly vocal social and ethical framework, the risk matrix has become incredibly complex for boards to navigate.

This is what we see in our own work with GCs, as we try to navigate through and reconcile what sometimes appear to be incompatible commercial, legal and social priorities and constraints. Business resilience, confidence and reputation fundamentally relies on finding a pragmatic route through and the emergence of new legal ops functions reflects these trends.

Whilst this is going on there is, however, a danger that some of the GCs' wider value and contribution to their boards can be somewhat lost in the risk agenda. In-house lawyers themselves, as our survey shows, often identify their role with the risk – and it's a temptation that the C-suite falls into too. Which can make 'risk' a bit of a bunker for the GC, that prevents the wider spectrum of their contribution being properly perceived or capitalised on by the board. Are there potential opportunities here, if conversations can be had, and these perceptions can be modified?

Our C-suite contributors suggest that opportunities for GCs could be there for the taking. Finding out how we can equip GCs to take a central role in their companies – whether in the field of having a better understanding of the soft skills that warrant investment, or in strengthening the means of measurement and data capture around what they do- has to be part of what the future holds for today's GC.

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SCOPE OF RESPONSIBILITY

Compliance and regulatory issues frequently fall under the remit of the legal team, setting the tone and expectations of what a legal team can deliver

It is not surprising that the legal team takes responsibility for compliance and regulatory issues. However, the survey aimed to take a deeper look at the activities undertaken by these teams to gain an understanding of how General Counsel and Heads of Legal viewed their roles and to what degree they felt they had a broader ‘strategic business advisory voice’.

When asked whether their teams took responsibility for compliance, regulatory and business assurance issues only 17 per cent of respondents indicated ownership of all three areas whilst 25 per cent indicated that they were only responsible for compliance.

Furthermore, both size of the legal department and the scope of their responsibility (company-wide / global, divisional or regional) bore little relevance to the degree of coverage in these three areas.

In contrast, in organisations where the General Counsel also held the role of company secretary a far larger proportion (65 per cent) took responsibility for all three areas – compliance, regulatory and business assurance.

Assuming for a moment that these activities are considered as operational rather than strategic raises the question as to whether the legal team are perceived as being predominantly operational.

The survey data reflects this, where 50 per cent (12 individuals) of board members surveyed indicated that the role of the General Counsel or Head of Legal was predominantly operational, compared to 29 per cent (7 individuals) who considered the role of the General Counsel or Head of Legal to be predominantly strategic.

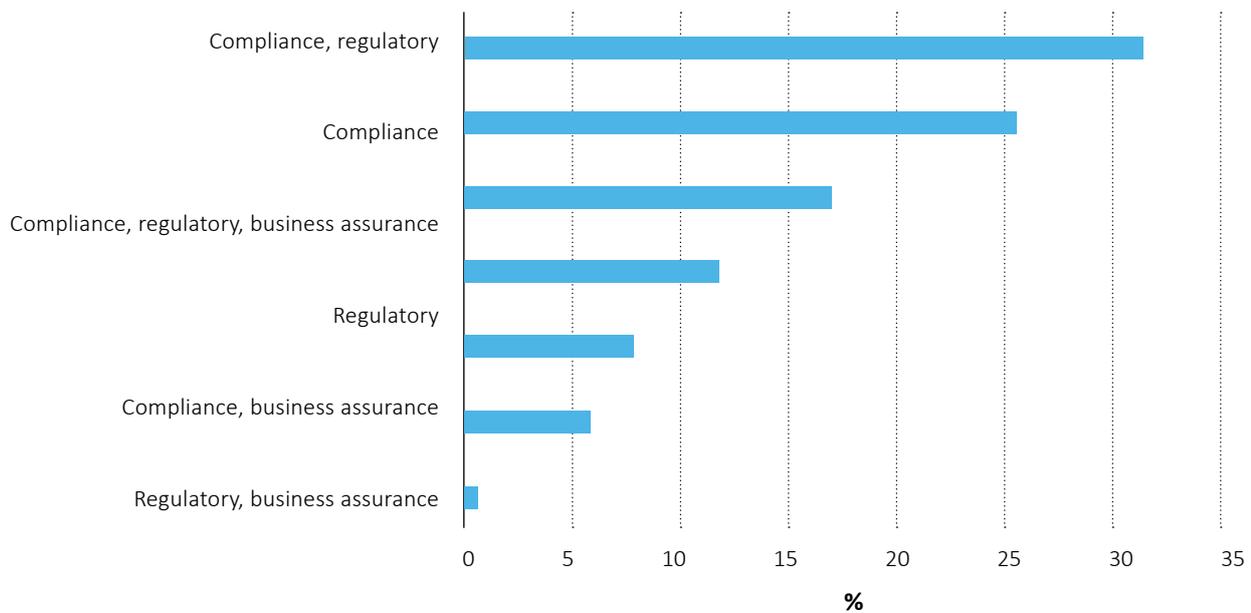
Furthermore, when these board members were asked whether they thought the General Counsel or Head of Legal should have a full-time board position, 53 per cent felt that they should not, underlining the view that legal has a purely operational focus in their organisations with little or no scope for input on strategic issues. ■



‘It’s important for the GC to be in the room when relevant things are discussed, but to have a permanent seat – you need to justify it.’

**Steven Colsell,
Non-Executive Director, Starling Bank**

In addition to the legal team, which of the following also form part of the GC office/Head of Legal's office and report into you?



ALIGNMENT TO THE BOARD

Lack of permanent board positions for General Counsel restricts ability to provide strategic insight

With only 22 per cent of respondents holding a permanent board position, the survey sought to understand the relationship the legal team has with the board and what level of influence they have at board level.

The survey asked respondents who do not have a permanent board position to select what best describes their relationship to the board. The responses further emphasise the board level perception that the role of the legal team is to deliver robust advice on issues of risk and compliance whilst also managing the day to day legal matters. A small number (8 per cent) attend board meetings in their capacity as company secretary whilst 50 per cent attend board meetings in an advisory capacity and only when required. A further 42 per cent of respondents indicated that they sit on one or more board level or management sub-committees.

These results show that the legal team is embedded in the business at a senior level through their engagement at board level and their involvement in board level sub-committees. However, with half of respondents attending board meetings only when required and in an advisory capacity it would suggest that their ability to influence key strategic decisions is not as strong as if they held a permanent position at board level.

REPORTING LINES

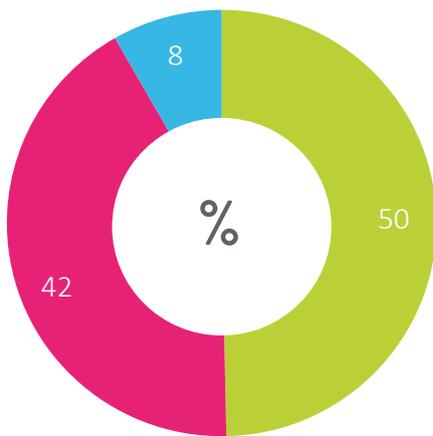
One factor that could enable General Counsel and Heads of Legal to have a greater level of influence is the reporting structure within their organisations. The survey found that just under half (45 per cent) of respondents report directly to the CEO which clearly provides them with the opportunity to gain an understanding of board level concerns and activities. At the same time, this reporting line affords them the opportunity to reach out on topics beyond risk and compliance, thereby affording them the opportunity to demonstrate a deeper understanding of the business and the strategic direction their organisation is taking.

Board members need a peer, not a subordinate, who is simultaneously a good director and a subject matter expert in law and regulation. For CEOs it's not "why would I have my GC on the board?" but rather "why wouldn't I?"

Edward Smith
General Counsel, Telefonica

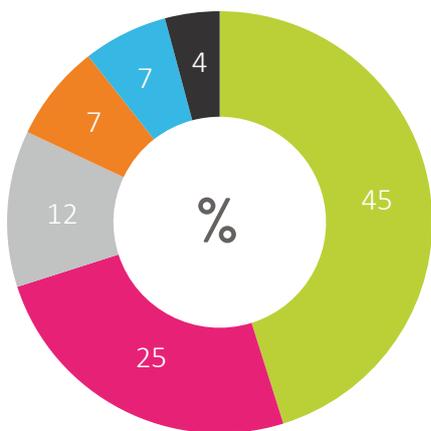


If you do not sit on the board, please select which option best describes your relationship



- I attend board meetings when required in an advisory capacity
- I sit on one or more board or management sub-committees
- I attend as company secretary

Please select which option best describes your reporting line



- I report to the CEO
- I report to Group GC / Legal Counsel
- I report to the CFO
- I report to Group GC / Legal Counsel but have a dotted reporting line to a Managing Director
- I report to the COO
- Other (please specify)

However, a significant proportion of respondents report to a board member other than the CEO with 12 per cent reporting to the CFO and 7 per cent reporting to the COO. Whilst these reporting lines still provide a direct line to a board level individual, it suggests the focus and concern of the organisation around their legal team and its activities is on cost and efficiency rather than leveraging the legal team to provide strategic advice.

Whilst this is an extremely important initiative for any organisation, it is arguable that a sustained focus in this area has the potential to draw a General Counsel's attention away from broader strategic issues. Over the next few years this focus on cost and efficiency is likely to intensify, resulting in an increase in the number of organisations that hire an operations manager to focus on these activities.

As a result, the General Counsel should have more time to focus on legal and (hopefully) strategic business issues. The question remains as to whether this will see a shift in reporting lines away from the CFO and COO as these organisations show efficiency gains in their legal operations.

LEGAL OPERATIONS

With the rapid growth in legal technology and the focus on reducing the cost of legal, many organisations are looking to their legal teams to implement cost reduction initiatives. To achieve these cost reductions, the legal sector has seen the creation of (and rapid growth in) the role of the legal operations manager and organisational groups, such as the Corporate Legal Operations Consortium (CLOC) who have developed frameworks to help guide the delivery of these efficiency activities.

By implementing these technologies, companies can reduce their legal costs via cost and time efficiencies. Outsourcing to legal tech providers is less expensive than private practice law firms, and automation of tasks leads to a much shorter completion time.

Daniel Reed, the CEO of UnitedLex sees a huge opportunity in the legal sector and believes that the C-suite at major businesses are beginning to ask why is it that the business services functions such as HR or finance have gone through a massive change, migrated into the cloud and digitised, but the legal department hasn't?

This belief has been backed up by some landmark transactions over the past 12 months. Last year GE agreed a deal with UnitedLex to partner on handling litigation and investigations work which is expected to reduce GE's legal spend by around 30 per cent. And, at the end of 2017, they also struck what is believed to be the biggest-ever managed legal services contract, a five-year deal to support IT business DXC.

Clearly, the combination of legal operations managers and technology led alternative service providers can deliver cost savings and free up the time of General Counsel to focus on broader business issues.



“Tech is exposing the legal function and in the last two years it has lost its immunity from the scrutiny of the C-suite and the board of directors. It is no longer sacrosanct”

Daniel Reed
CEO, UnitedLex



BOARD LEVEL ACTIVITIES

Following on from looking at reporting lines the survey asked General Counsel and Heads of Legal to select the top three activities that best defined their alignment to the board. Although there was a mix of responses between risk and compliance related issues alongside strategic focus, 63 per cent of respondents indicated (amongst their top three answers) that their board alignment was best described by 'I highlight risk – business or reputational'.

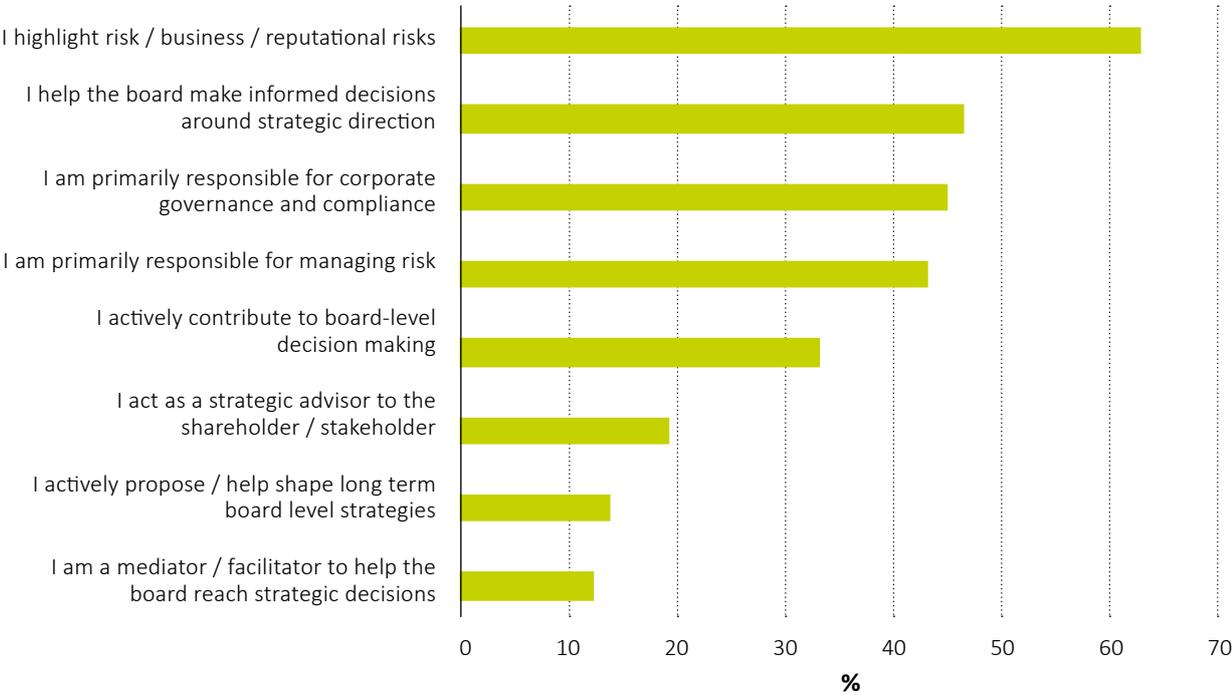
This overriding impression that the core focus of legal teams is concerned with risk is further underlined by the other responses; 'I am primarily responsible for corporate governance and compliance' (45 per cent) and 'I am primarily responsible for managing risk' (43 per cent).

However, it is important to note that 47 per cent (and the second most frequently selected answer) of respondents indicated that they 'help the board make informed decisions around strategic direction' and a small number of respondents 'help shape long term board level strategies' or 'act as a mediator / facilitator to help the board reach strategic decisions'.

Clearly, many General Counsel and Heads of Legal do play a role in helping to inform and guide the strategic direction of their organisations.

However, the real questions that arise from beyond the survey are to what degree are they involved in these conversations, and would their involvement and influence be greater if they had a permanent board position? ■

Which of the following best describe your alignment to the board?



FUTURE ASPIRATIONS

Increased risk awareness driving changing relationships between the legal team and the board

The survey went on to ask respondents whether they felt there was a change in the way the legal team is working with the board. Just under half (45 per cent) of respondents felt that they had detected such a change. However, the most frequently cited reason for this change was a 'greater risk awareness' (76 per cent) with only 40 per cent indicating that this shift in working relationship with the board could be attributed to 'market opportunities / challenges in a changing world' and only a few respondents selecting other responses such as 'cost pressures' or 'growing diversity / gender equality'.

These results further enhance the impression that the fundamental relationship between the legal team and the board is rooted in the requirements of risk and compliance. Other activities where the legal team could provide valuable input, such as strategic direction appear not to be considered, by the board, as an area where the legal team are routinely called upon.

DESIRE FOR CHANGE

Although 78 per cent of respondents did not hold a permanent board position at the time of the survey there was a strong desire amongst these respondents to achieve such a position in the coming years with 36 per cent citing that they would like their role to become a board-level role within the next five years. Furthermore, respondents also focussed on seeking opportunities to actively propose and shape board-level strategies.

This suggests there is ambition among GCs – so what is holding them back? The results suggest entrenchment to regulation, compliance and risk management on the part of GCs may be at the root of this.

When asked how the legal team could take a more active role at board level, the top answer selected was reputational issues (92 per cent) followed by a focus, once again, on compliance (83 per cent), risk (67 per cent) and regulatory (62 per cent) related issues.

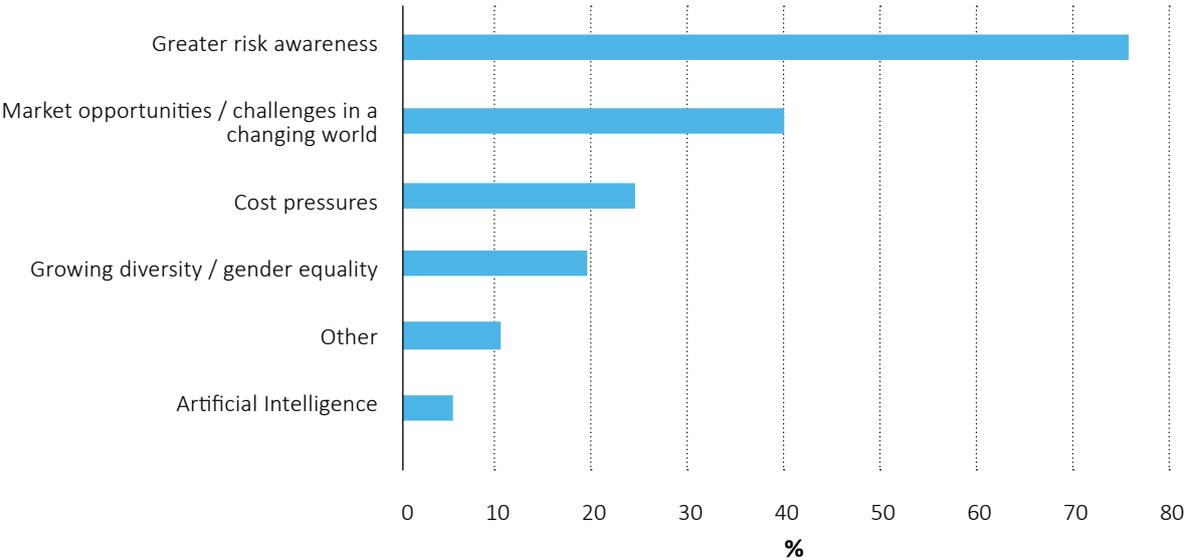
Responses that would indicate a deeper involvement in the strategic direction of the business, such as 'representation of wider stakeholders' viewpoints' and 'adaptation to wider socio-political market changes' were selected by 54 per cent and 45 per cent of respondents respectively.

These results are more surprising when framed in the context of some of the other options available. 'Privacy, data and cyber risks' was only selected as a top three option by 48 per cent of respondents. Given the recent regulatory changes with the introduction of GDPR and the ever-increasing threat of Cybercrime it is not unreasonable to expect that these issues would have weighed more heavily on the minds of General Counsel.

The same can be said of 'Brexit risks / advice' which was the least frequently selected answer and only put into a top three list of activities that General Counsel felt their team could take a more active role at board level by 33 per cent of respondents.



Which of the following factors, if any, are contributing to a change in the way the legal function relates to the board?



How would you like to see your role changing in the next five years?



A DIFFERENT MESSAGE FROM THE BOARD

When comparing the responses from General Counsel and Heads of Legal with the opinions of board members the survey highlights stark contrasts in the perceived areas of focus and importance.

When board members were asked what attributes would help the General Counsel or Head of Legal secure a board-level position, board members cited a ‘demonstration of commercial awareness’, ‘avoidance of being overly focussed on legal specialism / issues’ and ‘demonstrate an understanding of business imperatives’ as their top three responses.

The apparent disconnect between the board and the legal team as to the skills and attributes required to secure a seat on the board appears to be clearly articulated through these responses. And, looking back at the opening section of the report, the perception set by General Counsel and Heads of Legal through their focus on risk and compliance issues might have inadvertently resulted in an institutionalisation of behaviour and ‘activity focus’ that might hinder their progression to the board.

Furthermore, when board members were asked in which ways they would like to see their General Counsel or Head of Legal take a more active role at board level they cited ‘actively propose / help shape long term board level strategies for the company’ and ‘help the board make informed decisions around the strategic direction of the company’ as their top two responses. In contrast, 43 per cent of General Counsel and Heads of Legal felt that the main benefit to the business from a closer relationship with the board would be improved risk analysis, further underlining the apparent disconnect between what the board want from the legal department and what the General Counsel think the board want from their teams.

It becomes apparent from the data gathered from both General Counsel and board members that legal

teams need to find ways to broaden the scope of their thinking and sphere of responsibility. These findings show that the board would welcome input from the General Counsel or Head of Legal on broader business issues and, as such, this should give the General Counsel the confidence to share their thoughts and views on the strategic issues faced by their organisation. By doing this, they would naturally become more actively involved in strategic decisions rather than feeling compelled to focus on regulatory, risk and compliance issues.

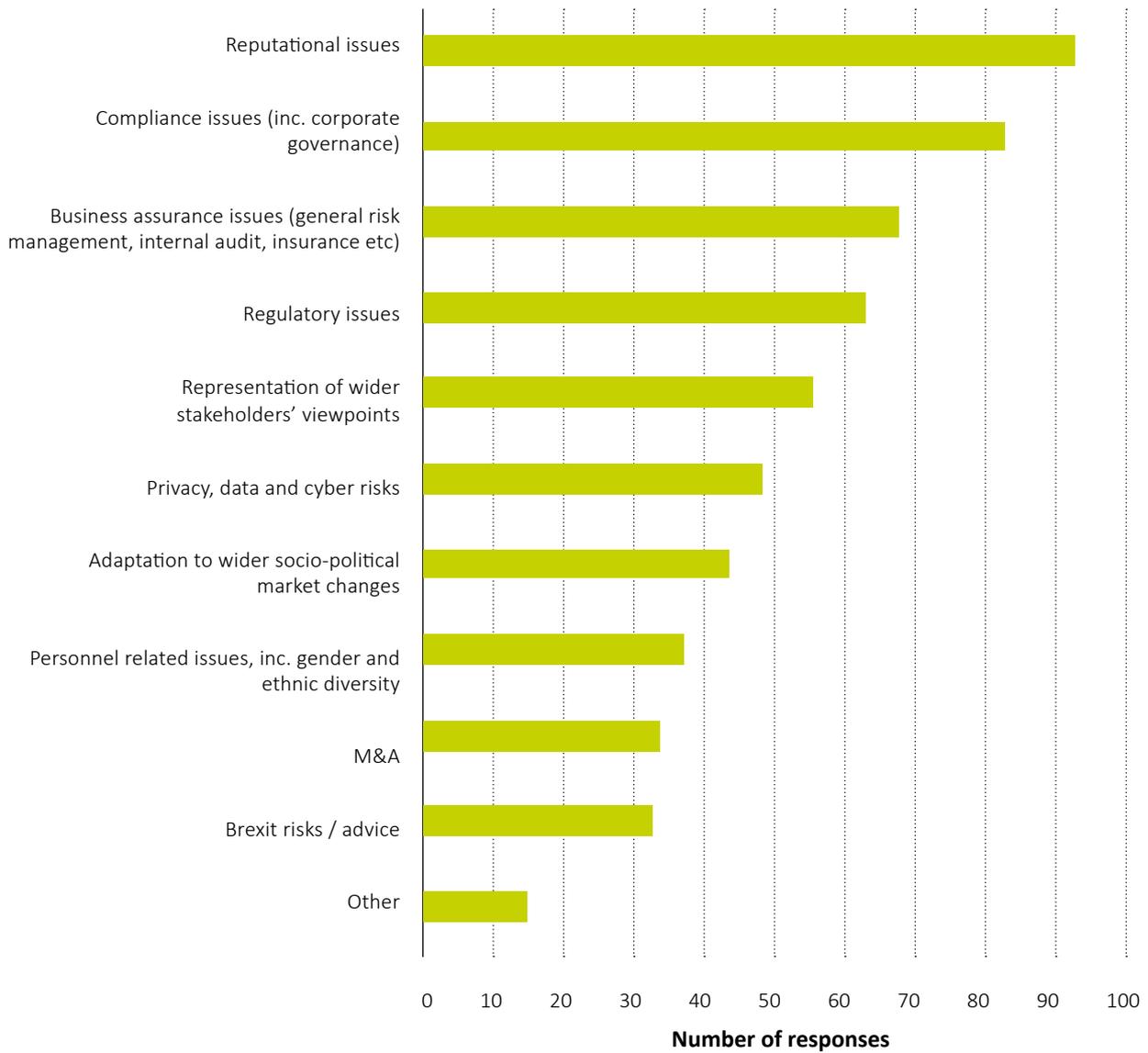
At the same time, company boards also need to embrace or be more open to exploring what the General Counsel’s knowledge and skill-set is and what different attributes they might be able to bring to the table thereby creating opportunities for GCs to be engaged across a wider range of business issues. ■



“Lawyers are unwilling to allow their legal muscles to go unexercised and do something new, even for a moment, out of an unfounded fear of atrophy.”

Edward Smith
General Counsel, Telefonica

In which of the following areas of your organisation do you think you / your team could take a more active role at board level?



STRATEGIES FOR SUCCESS

General Counsel and Heads of Legal should have more confidence in their business skills and knowledge

When asked to identify the skills that had, or would assist strategic alignment to the board, General Counsel and Heads of Legal selected 'better knowledge of my organisation's financials / strategy', 'business skills / commercial training' and 'financial skills training' as their top skill requirements.

Taking a dispassionate look at these responses suggests an underlying lack of confidence on the part of General Counsel and Heads of Legal in their own abilities across a range of general business skills. Whilst it is acknowledged some of these skills cannot be taught and are instead obtained 'on the job', to have reached the position of General Counsel or Head of Legal the individual is likely to have demonstrated these attributes and should take confidence from this.



"[A Head of Legal] needs to understand the context in which they're operating, they need a wider awareness – the more a GC can demonstrate business acumen, the more relevance there would be in having them on the board."

Jonathan Cathie
Chief Corporate & Legal Officer,
Gresham Technologies plc.

Going forward, it might just be a matter of honing business acumen which may not have been used on a day-to-day basis throughout the earlier part of their

career. Furthermore, any lack of confidence may only be because they feel these skills are not as great as their legal knowledge.

Therefore, assuming General Counsel do indeed have the requisite business skills it might be just a matter of reaching out to the relevant department, such as finance, to obtain access to the required information.

Given the role and importance of the General Counsel they are unlikely to be refused greater exposure to group financials and, to the extent of not already receiving, open conversation with the CFO.



"Lawyers will state brazenly "I don't do numbers, I only do words" and in so doing they exclude themselves from the most important decisions their organisations face; not a move that gets you on the board."

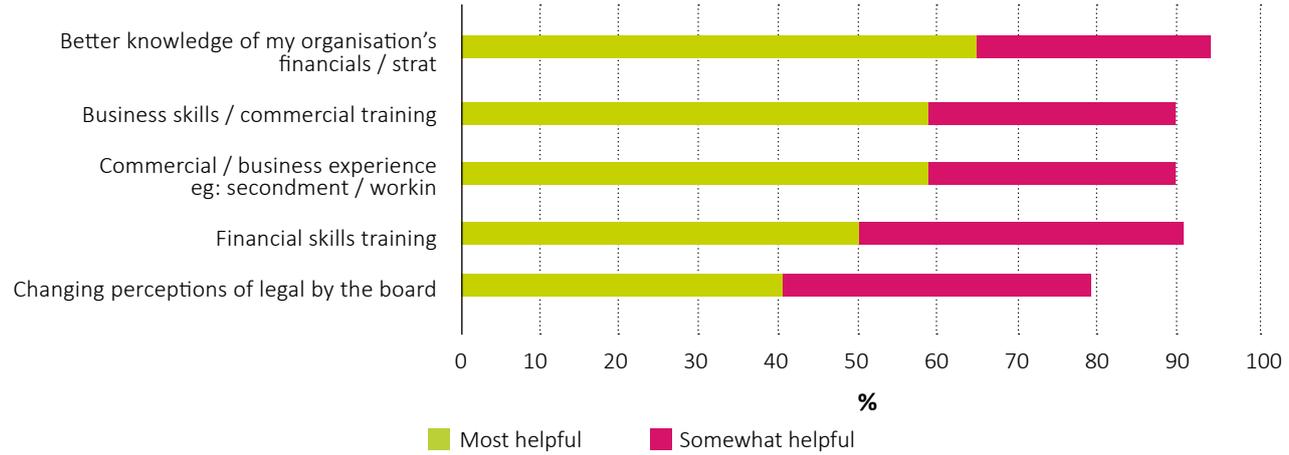
Edward Smith
General Counsel, Telefonica

A key difference between General Counsel and board members was the relative importance placed on activities such as 'holding a trustee position', 'membership of an advisory panel' or 'NED role'.

Whilst only a few General Counsel and Heads of Legal considered this activity to be helpful, board members appeared to place greater importance on the experience that such an activity would provide. ■



What factors / skills have helped you most or would assist your strategic alignment to the board?



METHODOLOGY

To obtain a broad understanding of the roles and responsibilities undertaken by legal teams in UK companies, *The Lawyer* surveyed 224 General Counsel and Heads of Legal with legal team sizes varying from 1 – 10 employees up to teams with 100+ lawyers.

In addition to the survey sent out to General Counsel, *The Lawyer* also sought the opinions of CEOs and other board members to obtain their view on the role of the legal team. The results from this small group of respondents (24 in total) have been included in the report to provide board room context and the responses received underline the general sentiment of the General Counsel survey and provide an insight into some areas of difference.

Job Title
56%
General Counsel

Scope of legal team
72%
Company wide

Size of legal team
69%
Up to 10 team members

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