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OVERSEEING CULTURE AND THE EMPLOYEE VOICE ON BOARDS UNDER THE PROPOSED UK CODE REVISIONS

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The proposed revisions to the UK Corporate Governance Code are calling for boards to be more active in overseeing company culture and employee engagement.

Proposed revisions include having boards (i) monitor and assess company culture to satisfy themselves that behavior throughout the company is aligned with company values; and (ii) establish: a method for gathering the views of the workforce, a means for the workforce to raise concerns in confidence and anonymously, and arrangements for an independent investigation when warranted.

How should boards fulfil these new responsibilities without treading into management territory?

There are ten actions that good boards are now taking to oversee culture and employee concerns.

First, good boards insist on proper whistle-blowing. Many whistle-blowing programs are flawed. They are not anonymous, protected, independent, rewarded or remedied. That is a board's fault. Not surprisingly, people (especially women) do not come forward for fear of retaliation and career harm. If directors think that conduct risk is not occurring within their organization, they are wrong. It is just a question of degree. Bad news rises in good organizations, and there is a channel to go around management when need be, and directly to boardrooms. If bad news does not rise to a board, it does not go away. It gets worse. Good boards insist on proper channels directly to them.

Second, good directors receive disconfirming information on company culture and executives. If a board gets all its information from management, it is only hearing one side. Good directors receive their own social media analytics, view chat rooms, hear directly from employees, use google alerts, read what reporters and analysts think, walk around, and listen to what they hear and observe. This does not mean that directors are meddling or running the company, but have their eyes and ears open for themselves. If management tries to block or dominate a board's information flow, that is a red flag.

Third, good boards have executive sessions without management in the room. This is quite regular now in North American boardrooms, often twice per meeting. It is the one practice that has had the greatest impact on board effectiveness, directors maintain. Good boards remove management from a portion of each board and committee meeting. The have a safe space so independent, non-executive directors can speak confidentially. These "in camera" sessions are the main way that directors voice their concerns not within earshot of management. This does not mean that the CEO and any other executive directors are second-class directors, only that they are accountable to the board.

Fourth, good directors act immediately at the first sign of an ethical lapse. The standard that a director observes is the standard that is accepted by the company. One Audit Committee Chair had the board fire the CFO when the CFO was observed by the Audit Committee Chair at an airport not declaring liquor at customs. When good directors see wrongdoing, discrimination, disparagement, or unfair treatment, they call it out. They speak up. And when necessary, they fire the CEO or senior manager at the first sign of a lack of ethics. Otherwise, a board signals to the entire organization what is acceptable conduct. Bad boards have suffered by not acting when they should have. And if a board does not act when it should, good directors resign.

Fifth, good boards receive employee feedback that is unfiltered by management. They retain survey providers to conduct employee morale surveys that are directly provided to the board without management influence. They review qualitative exit interview results, staff turnover rates and litigation compared to their peers. A good board does not want to be the last to know and the rule of thumb is "no surprises."

Sixth, good boards are always refreshing themselves. Excessively long-serving or over-boarded directors are not permitted. The average directorship now is 300 hours, and all hands-on deck are needed for a solid and engaged board. New directors see things that long-serving directors may not see or may be used to, and they are more likely to speak up as they are not assessing their past decisions. A fresh set of eyes is invaluable. Homogenous boards engage in group-think and do not ask tough questions.

Seventh, good boards link behavior to pay. Incentive pay can drive unethical behavior. Good directors benchmark management contracts for conduct and ethics clauses. The define just cause for dismissal to include ethics. They have fair treatment form part of all employment contracts. They ensure that the company code of ethics and diversity policy are conditions for incentive pay to vest, and they claw back pay if ever misconduct occurs.

Eight, good boards do rigorous interviews and background checks when hiring the CEO and nominating other directors. Personalities are generally stable, and a company or boardroom can be wrecked with the wrong hire. Background, reference, social media, personality, criminal and financial checks and testing are now standard in ethical companies.

Ninth, good directors ask good questions. If a director has a question or concern, most of the board shares the same concern. I have interviewed over a thousand directors over my career. The most common regret that directors have, often after a scandal, is twofold: (i) I didn't speak up when I should have; and (ii) I didn't fire the CEO soon enough. One corporate secretary after a recent public scandal told me, "when the board does not ask questions, we have succeeded." Good directors ask. And if they do not like what the answer is, they press further. Where there is smoke, there is often fire.

Lastly, good directors want company culture audited. Management may push back against this by saying that the board does not trust or have confidence in them, or is micro-managing. Good directors, however, insist on behavioural and integrity controls, and independent auditing of these by the internal auditor, who reports directly to the board, not management. Many conduct failures and scandals have happened because senior management blocked access to the auditors from the board. Good directors direct internal audit to test the controls for culture and integrity (including complaints, reaction time, investigation protocols, record keeping and non-retaliation) and report directly to the audit committee and full board on their findings.

Conclusion

Governance is changing. Boards are becoming far more active and are investing significant time in their duties and responsibilities.

There are occasions where the best efforts will fail, but for the most part, conduct failure happens when a board is complacent and fails to act when it should have.