



The Modern General Counsel and Company Secretary – what has changed with Covid?

The Modern General Counsel

The modern General Counsel is very much a trusted adviser to the CEO and supports the Chairman in the capacity of Company Secretary. They must navigate a path which bridges the Executive and Non-Executive Directors and be a commercially savvy member of the senior leadership team – in most cases, the Executive Committee.

They must possess excellent judgement, built from years of experience in business; strong emotional intelligence gained from operating within the Boardroom and an ability to read a room, challenging at the best of times, but especially so in an era of remote working.

In an increasingly regulated world, there is greater scrutiny, governance and regulatory pressure on Boards than ever before. The role of the GC / Co-Sec has evolved to meet the greater needs of Boards and to manage the governance and regulatory pressures that Boards face.

An effective GC supports the CEO in making decisions that reflect strong corporate values, as well as being commercially focused.

A Covid Driven Agenda?

Crisis Management: 2020 has proved to be one of the most challenging years in recent history and GCs have found themselves at the heart of the Executive team and at the sharp end in managing through the pandemic on a range of matters; commercial, restructuring, refinancing, governance, managing stakeholders, well-being and mental health.

Cyber Issues & Data Protection: Since coming into focus with GDPR in 2018, cyber has only become a bigger issue and during the pandemic, a major and ongoing burden for GCs.

Corporate Governance: Company Secretarial matters of reporting and disclosure, the GC / Co-Sec needs to manage a broad range of matters, in a more challenging and socially distanced environment with virtual Board meetings, and the challenge of operating in a challenged physical environment.

Regulation & Compliance: Regulators are increasingly intrusive both in and out of financial services. A high priority for the GC is to oversee the compliance function or liaise with the Head of Compliance. The standards set and investigations by the FCA and others have not relaxed in the face of the pandemic.

Risk & Reputation: The business operation, its brand, what it stands for and commercially balancing its exposure to risk. A balance must be found between innovation and risk. Values, ethics and integrity play an important part in corporate life and the GC is often seen as a company's moral compass.

Shareholder Activism: With so much volatility in the market and businesses under new pressures due to the fallout from Covid, there is shareholder pressure and we have seen an increase in activist funds seeking opportunities in the market.

General Counsel & Company Secretary – To Combine or to Split?

In roughly half of the FTSE 100, the GC and Company Secretary roles are combined, across a range of sectors from 3i and Aviva to Vodafone and Whitbread. This does change, however, with some large PLCs with previously combined roles i.e. BT, split the roles again. Others, such as Lloyds, and now Barclays, are returning to a combined model. Specific circumstances at any particular organisation can lead to change, but the balance has been roughly equal for a number of years.

Where there has been a change, in the professional background of those in the role of the Company Secretary. Currently, almost two thirds of FTSE 100 Company Secretaries are lawyers (either in a combined or stand-alone role). In around 20% of UK blue chips, lawyers are doing a stand-alone Company Secretary role, for example Rio Tinto and, almost one third are (non-lawyer) qualified Chartered Secretaries, eg. BP.

The combined role has always had a high level of complexity – as General counsel, reporting to the Chief Executive and



serving on the Executive Committee and as Company Secretary, the responsibilities are to the board and reporting to the Chair. Regulation and governance pressures on the board continue to grow – companies are increasingly focused on risk management and compliance. The complexity of each role has therefore increased significantly, and external stakeholders have more influence.

In a very large, complex, highly regulated and multinational organisation, it makes a lot of sense to split the roles to keep things simpler. This can mean simpler reporting lines with the GC reporting to the CEO and the Company Secretary to Chairman. This also avoids any complexity or potential conflict around reporting. However, in less complex organisations, it is reasonable to expect one individual to have the breadth of skills to deliver both roles effectively. A combined GC / Co-Sec is often supported by a strong Deputy Company Secretary, who brings more of the traditional and technical skillset of that role, enabling the GC to focus on high-level Board and Governance issues.

Over the last ten years, there has been an ebb and flow of combining or splitting the roles in the FTSE 100. Roles are often split on restructuring or on senior appointments, or in line with a new Chairman's preference. A combined role enables the GC to be more effective in their day job, through their attendance of board meetings.

Appointing General Counsel – What do we need?

The GC needs to be:

- A broadly experienced lawyer and trusted adviser who can identify and rationalise the risks to the business.
- Someone who can argue for the best solutions to achieve the strategic and financial goals of the business.
- A proactive contributor on the executive committee, with excellent judgement and ability to manage a crisis, whether that's disruption from activist shareholders or black swan events.

It is important to acknowledge that organisations may have specific legal issues relating to their sector or regulatory regime.

However, some of the most important factors in appointing a GC are cultural and personal fit. Just as when hiring a CFO, the focus should not be purely on technical ability or perhaps sector experience, but a need for broader commercial experience, balance, perspective, judgement and softer skills. Deep technical expertise and broader generalise skills are not mutually exclusive, but individuals will often have a different balance of strengths.

The General Counsel needs to bring a balanced approach to risk and compliance at Board level and its impact on business strategy. They are often the custodian of non-financial risk and the company's reputation.

The General Counsel plays multiple roles in the business; they may also be the Company Secretary so will need to juggle roles and stakeholders. Often, they stretch way beyond their official job description, meaning they must be adaptable, diplomatic and discreet. This is a position of privilege.

Ten Key Points to Remember:

1. Judgement, built on experience, brings balance & perspective
2. A strategic thinker with strong commercial acumen
3. A trust adviser and confidence of the CEO and Board
4. Gravitas and a balance of confidence and humility – they must inspire confidence in their advice
5. Proactive and horizon scanning
6. Manages complexity and is decisive
7. Effective communicator, not in legal terms
8. Solutions driven and does not have a black and white approach
9. High emotional intelligence
10. Skilled in managing stakeholders with different perspectives and finding a patch that satisfied both the CEO or the Chairman