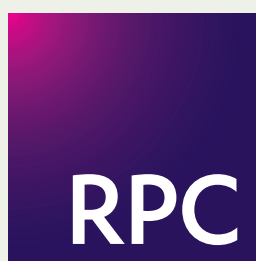


The role of the general counsel

The role of general counsel is undergoing a major transformation – with strategic and commercial responsibilities coming to the fore.

in association with



It has long been held in some quarters that lawyers are poor choices for the boardroom. CEOs are said to see them as the harbingers of gloom, lacking business acumen or commercial nous. Consequently, they are rarely on the list when a board position becomes vacant. Nor have lawyers themselves focused on joining boards – with many anxious about independence and potential conflicts. The growing number of general counsel held to account for corporate misdeeds is evidence of the blurring lines.

According to ex-lawyer Bill Knight, who has co-founded a company aimed at assisting lawyers become directors, in an article published by the *Global Legal Post*, one City headhunter told him that she had never been asked for a lawyer to fill a board vacancy. Mr Knight, who has occupied a number of high profile jobs in the City as well as having run a major City law firm, said that, with some exceptions, there was a belief that “...lawyers do not bring useful skills to the boardroom and may even be counter-productive. Chairmen and

CEOs I have spoken to have been quite negative. They do not like the lawyer’s mindset: ‘Prepared to debate, but not prepared to agree’; ‘never prepared to be wrong’; ‘just a craft industry’; ‘don’t give me a lawyer – I’m in enough trouble already.’”

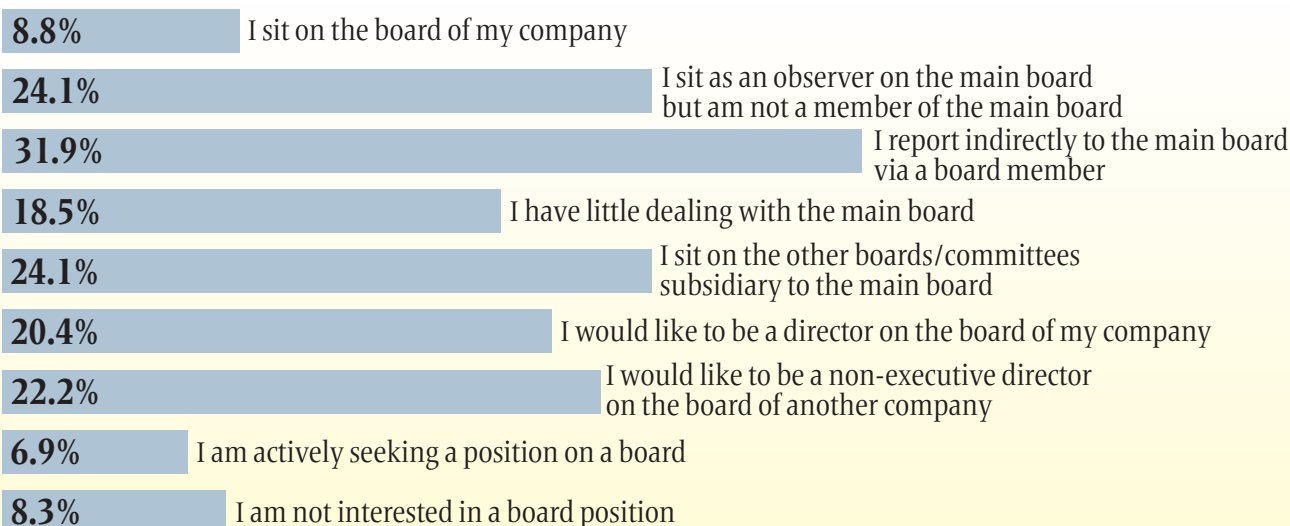
Lawyers were ‘risk averse’ which had put them off the idea of joining a board, he added.

An aspiration to join the board

All this may be about to change, however, in the light of the GC Excellence research where, for the first time, it has become an aspiration for one in five of those surveyed to join the board. Globally, nine per cent said they actually sat on a board while seven per cent said they were actively seeking a position on a board. Nonetheless, the fact that corporate counsel are focusing on this aspiration is a major first step to making it a reality.

Why has this change come about? The reshaping of the GC role has coincided with the financial crisis and the accompanying regulatory onslaught. But there is also empirical evidence in a recent

Which of the following best applies to you?



THE ROLE OF THE GENERAL COUNSEL

US study which demonstrates that the addition of a lawyer on a board can actually improve the company's financial performance.

Indeed, the respected *Financial Times* newspaper recently posed the question: 'Are lawyers taking over the world?' as it discussed how 'lawyer directors' in the US contributed positively to the bottom line.

The academic study, carried out by Lubomir Litov and Simone Sepe of the University of Arizona and Charles Whitehead of Cornell Law School, found that in 2009 some 43 per cent of US companies had lawyers on their boards – which had enhanced corporate value by 9.5 per cent.

However, while the US has embraced the trend, other jurisdictions are less positive. The UK shows no appetite for the 'lawyer director' – with few lawyers currently sitting on boards in the FTSE 100 companies.

The risk factor

There is little doubt that appointing lawyers onto

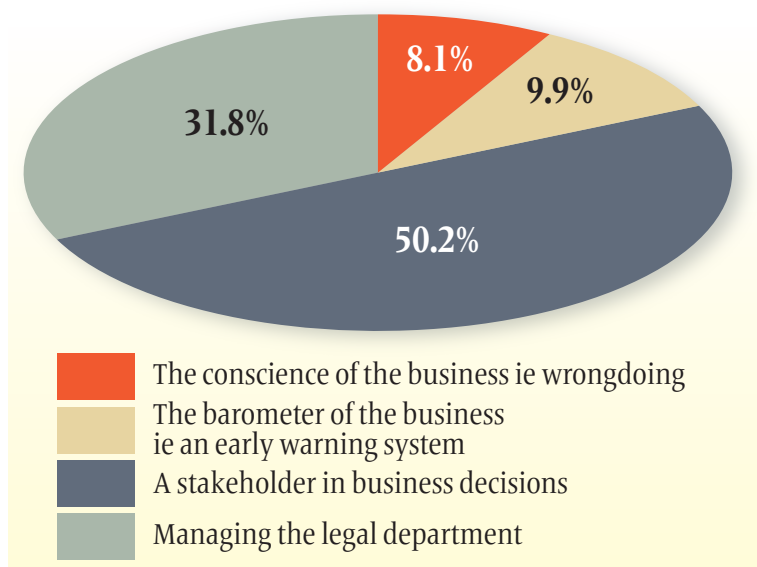
boards does reduce external legal risks while also contributing to enhanced corporate governance and it would seem that lawyers are finally taking this to heart.

Even the lawyers themselves believe their presence at the top improves governance and reduces risk, according to the research. This may explain in part the new enthusiasm for aspiring to join the board and the willingness to embrace an enhanced commercial role which is one of the hallmarks of this report.

Indeed, what these results demonstrate is that an increasing number are now prepared to go down this route, wielding influence and becoming part and parcel of the business – this is further highlighted when asked what best describes the respondent's role with the company.

Half saw themselves as 'a stakeholder in business decisions' while one in three (32 per cent) still saw their main function as managing the legal department. One in ten viewed

Which of the following best describes your function in the company?



Daniela Della Rosa, general counsel, Gucci



The boardroom

Daniela Della Rosa is one of the growing number of general counsel heading for the boardroom. She joined the Gucci board in 2008, on her arrival at the company, and has been at the helm ever since. In recent times she has also taken up an appointment as a director on the board of luxury notepad company Moleskine – and is thoroughly relishing the experience.

The quota factor

“The new laws on quotas for women are helping females to get onto boards,” she says, adding that she is on a number of lists of women who would be suitable for such appointments. As a consequence of this, she was approached for the position at Moleskine, competed with a number of other candidates, and was given the job in April last year.

High risk

The level of risk associated with being a company director now is extremely high, she says. “You are not necessarily compensated for the level of risk when you are working for a company and on its board.”

And, much as she would like to develop her board portfolio, she says: “When you have a full-time job, it is not easy to have more than one or two board jobs.”

However, she aspires to broadening her experience and expanding into different areas of business. She is also keen to be seen as a manager rather than being simply defined as a lawyer, although she concedes that this is a challenging move to make.

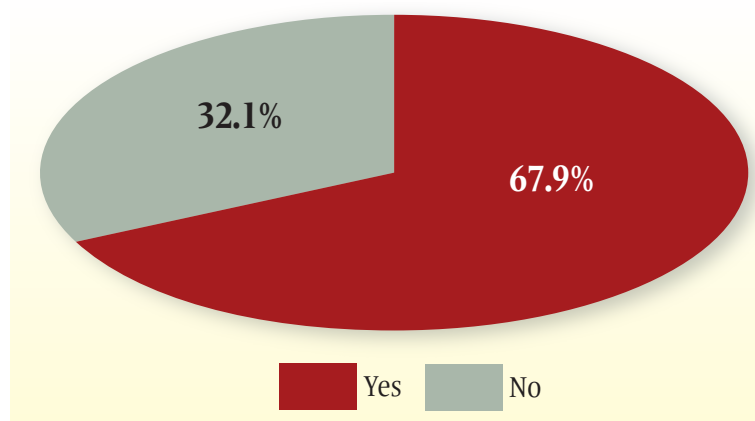
themselves as the barometer of the business and eight per cent as the conscience of the business.

The move into commercial strategy is an enduring theme of the research, with two in three (68 per cent) saying they were more involved in formulating commercial strategy in their company than five years ago.

On the business front, most (90 per cent), said they now gave broader commercial advice to their company. Many expect an enhanced service from their external law firms – combining legal advice with business acumen. Two in three respondents said this was part and parcel of the service which their advisors should provide.

However, not all corporate counsel were of this view, with 32 per cent having no such expectation. It may be that this latter group are missing a trick – a good commercial law firm has a wealth of business experience and connections which could be exploited by savvy general counsel.

Do you expect to receive commercial advice beyond pure legal advice from your external lawyers?



How is the legal department perceived?

Perception is never easy to analyse – proved by the responses to the question on how the board would perceive the contribution of the inhouse legal department to the commercial value of the company in the past year in a range of areas from legal, to shaping commercial strategy and assessing the strategy in the context of the prevailing risk environment.

Generally, respondents were comfortable answering ‘excellent’ when asked about ‘offering legal advice when asked for it’ with 73 per cent saying excellent and 23 per cent good.

However, it is interesting that one in three did not feel their contribution in that area would be perceived as excellent, particularly in the main speciality of the legal department – giving legal advice when asked for it.

And only half said that the board would perceive as excellent the legal department’s

view on the existing strategy while 38 per cent believed the board would give it a ‘good’ rating.

Only 18 per cent say the board would see their contribution to the shaping of commercial strategy as excellent – with most (47 per cent) saying good and one in four saying satisfactory.

Assessing the strategy in the context of the prevailing risk environment would get an excellent rating in 35 per cent of cases, while half thought they would be regarded as good.

Proactively offering sound commercial advice that influences strategy gets an excellent from 27 per cent of respondents with 51 per cent saying good and 14 per cent saying satisfactory.

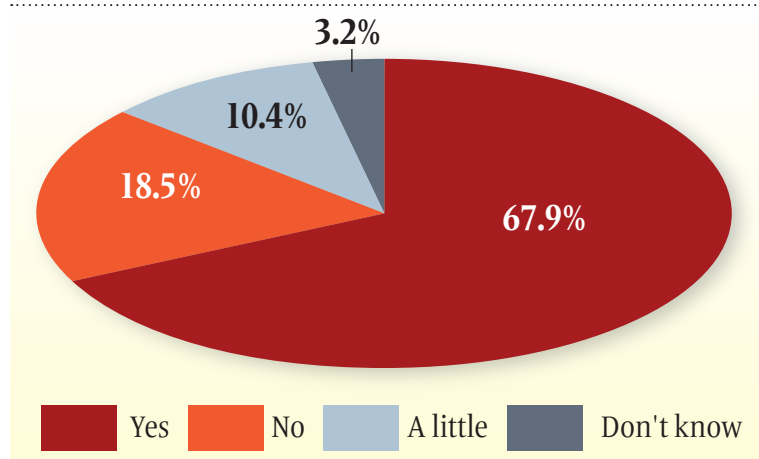
In discussing the legal department’s contribution to the commercial value of the company, some of the respondents defined their contribution in a different way. “We understand the business objectives and act as a partner in achieving the common goal,” one general counsel from a large manufacturing company said.

Another, from a medium-sized TMT company,

How do you think your board would perceive the contribution of the inhouse legal department to the commercial value of the company in the past year?

	Excellent	Good	Satisfactory	Don't know
Helping directly shape commercial strategy	38	101	55	20
Proactively offering sound commercial advice that influences strategy	58	110	30	18
Assessing the strategy in the context of the prevailing risk environment	75	112	22	8
Giving the legal view on the existing strategy	111	84	16	8
Offering legal advice when asked for it	157	49	7	5

Would you say you are more involved with the formulation of commercial strategy in your company than five years ago?



Only one in ten viewed themselves as the barometer of the business and eight per cent as the conscience of the business

Call a lawyer

“Edmund Burke famously said that the legal education sharpens the mind by narrowing it.

Although the lawyer’s analytical and deconstructionist approach to a problem may have its place in the boardroom, these are not the first skills the UK CEO thinks of when putting his or her team together – after all, lawyers can be hired when necessary.

“So the first thing is for lawyers to take a step away from the law, to change their minds and broaden their horizons. Lawyers need to get exposure to other ways of thinking by joining boards of charities, schools or other not for profit organisations while still in practice. At the moment there is a waste of talent and training.

“Lawyers need to get more experience and companies who are looking to fill a board vacancy should think about broadening their approach to get the benefit of the lawyer’s sharp intelligence.”

<http://www.globallegalpost.com/management-speak/lawyers-on-board/>

Bill Knight is a founder of BCKR which provides a database of board positions.

said that his department would be recognised for “finding alternatives if a course of action is not possible, or inadvisable, or too risky.”

Lack of feedback

However, many of the respondents expressed views suggesting that they did not get any feedback from the board on their work.

One general counsel in a financial services company of £6 billion plus said he had little or no interaction with the board – going some way to explaining the disconnect between the legal department and the board on so many different levels. Another respondent said it was difficult to measure the legal contribution.

A board director of a global media company told the GC Excellence team that his board, “would invite the GC in to give a general run-down of what is going on. However, we always assume he knows what he is doing and he usually seems on top of it. So we don’t really get involved in the legal side so long as there are no major problems.”

Do you believe that having lawyers on the board of companies...

	Yes	No	Don't know
Improves corporate performance?	163	22	32
Encourages lower levels of corporate risk-taking and default?	158	40	17
Results in a decline in litigation risk?	147	45	24
Improves internal governance?	203	7	7

Lawyers improve governance

Despite this reticence, 93 per cent believed that having lawyers on the board of companies improved internal governance; 68 per cent said it led to a decline in litigation, while 75 per cent said it improved corporate performance and 73 per cent viewed having lawyers on the board as encouraging lower levels of corporate risk taking and default.

One general counsel working in an Italian based global company said he believed that “having a lawyer brings a different perspective which may affect how business opportunities are assessed. This may result in less risk taking or simply managing it better. Fundamental to the effectiveness of a lawyer on a board is that the matters rise to the board level.”

However, another said that having a lawyer on a board, whilst good, “could also stifle discussions at board level.”

Another, from a European energy company,

was of the view that boards were “less and less at the centre of decisions,” whilst a general counsel from a large financial company said that the answer “really depended on the quality of the lawyer.” This was backed up by a general counsel from a German pharma company, who said: “It always depends on the personality of the lawyer on the board.”

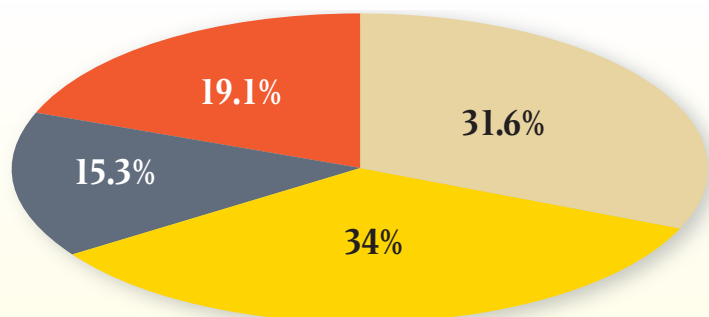
But not all are in favour of lawyers on boards. A general counsel from a TMT conglomerate thought that: “It’s important that lawyers are close to the board, not necessary that they are on the board.”

Risk management

When reviewing the biggest risk to their business over the next 18 months, financial topped the bill, with the general economy worrying 34 per cent of respondents. The threat of additional compliance was top of the list for 32 per cent while operational threats such as profitability was on the top agenda for 19 per cent.

When asked to list concerns in general over the

Which of the following do you consider the biggest risk to your business in the next 18 months?



- Compliance threats (eg from politics, law, regulation and governance)
- Financial threats eg the general economic threats and the state of the markets
- Strategic threats (threats re customers, investors and those involved with the business)
- Operational threats (overall and profitable workings of the business)

James Blendis:
general counsel and
company secretary of
mobile operator EE



“I’m the company secretary. I’m an officer of the board, but I’m not a board director. That’s probably the best arrangement. We are asked to advise quite often on some quite difficult decisions. I believe it is better to advise in an advisory and to some extent an independent capacity, rather than being in the same position as the other directors.”

next 18 months, regulation and compliance topped the worry list, with 57 per cent viewing it as the number one risk. Indeed risk issues dominated the main concerns for GCs with management issues lower on their agenda.

Creating value for the company was the second major concern, risk management was next, followed by anti-bribery and corruption compliance, then re-organising the legal department to maximise service delivery – which was on the agenda of one in four. Managing legal costs was an issue for a similar number of respondents.

Dealing with law firms

When asked about fundamental shifts in their dealings with law firms, two in three GCs believed firms were not using outsourcing to help inhouse legal departments reduce costs. On the positive side, two in three said communications with law firms were better, law firms were improving their understanding of the company's business needs

and firms spent more time trying to understand their needs.

The hot issue of fees, however, saw 40 per cent disagree that firms were offering better deals on fees and 46 per cent disagree that law firms were giving them more free internal support, such as secondments and training, and 37 per cent said firms were not using technology to sell legal services.

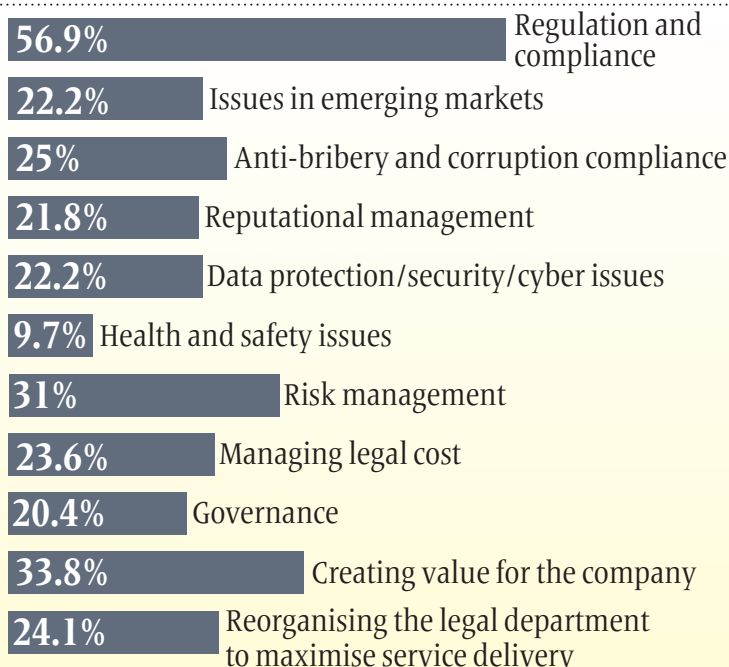
Instead, general counsel called for more support from their external law firms on the commercial side – with 61 per cent saying firms needed to keep pace by being more commercially aware of clients' business and 57 per cent saying they should be maintaining existing services at a lower overall cost. More value-added services were requested by 52 per cent while 47 per cent said firms needed to have a greater focus on alternative billing.

Developing the legal team

Interestingly, only eight per cent look to regular advisers to offer training to their inhouse teams

When asked to list concerns in general over the next 18 months, regulation and compliance topped the worry list, with 57 per cent viewing it as the number one risk

Which of the following are you most concerned about over the next 18 months?





RPC

where **General Counsel** go
for **specific advice**



Jonathan Watmough, managing partner, RPC



"It's already an accepted fact that the role of the general counsel has changed fundamentally, particularly in the five years since Lehmans crashed. What this research bears out is the extent to which GCs are now integral to the formulating of the commercial strategy of their businesses.

"In private practice, we need to be alive to this, and develop our thinking and service to accord with the new pressures that GCs face. Gone are the days when external advisers could simply dispense legal advice in a vacuum – today it's as important to frame that advice in broad commercial terms that make sense not just to GCs, but to the c-suite executives they work for.

"Some firms have already made great strides in this area but, as the research suggests, many still have a long way to go.

"One of the more notable refrains to emerge from this research is the proportion of GCs who aspire to sit on boards, either of their own companies or other organisations. This supports the general theme of them wanting, and having, a growing say at the boardroom table.

"In an increasingly regulated world, and one in which the aftershocks of the most severe of financial downturns are still being felt, this can only be a good thing, and it is a trend that will inevitably gather further pace in future."

and 12 per cent handle their legal and business training skills within the company. Meanwhile, one in ten do not have a formal development plan and two in three used a combination of internal and external support.

Ready for the role?

In conclusion, there is no doubt that many corporate counsel are ready to step up to the plate and take on a greater role within the business. However, equally, many do not see the board as the ultimate goal and indeed there is a major distance between many legal departments and the top executives governing the company – which becomes clear in many of the responses regarding how the legal department is perceived.

Even if sitting on the board is not on the general counsel's agenda, more efforts need to be made in influencing upwards and understanding how the board thinks.

What should law firms be doing to keep pace with the changing role of general counsel?

