Corporate Culture

Emerging trends and international best practice

'Culture' on the agenda

It is hard to escape the fact that "culture" has become a buzzword in the field of corporate risk management. Conversations around board room tables, with regulators, with advisers and between industry peers focus on the subject, leading quickly to difficult questions around how to define, measure and improve an organisation's culture.

From a regulatory perspective, the belief that culture and risk are inextricably linked has been made clear. This is particularly the case in the financial services industry, where bodies such as the UK's Financial Conduct Authority, the Financial Stability Board, the Hong Kong Monetary Authority and the Federal Reserve Bank of New York have all highlighted their focus on culture, and their view that a 'good' culture can act as a risk management tool.

The trend continues outside the financial services sector, with clear expectations being set by institutional investors and industry bodies that quoted companies will have regard to their culture in managing risk and delivering long term success.

Messages around culture are also flowing from prosecutors such as the Department of Justice in the US and the Serious Fraud Office in the UK, as they set out their views on the features of a successful compliance programme.

There is widespread acceptance that achieving the 'right' corporate culture can go a long way towards helping to manage risk. Employee misconduct risk is at the heart of the risks facing businesses today. The actions of employees can lead to material reputational or financial damage (and in a worst case scenario, criminal liability). Managing that risk is not just about catching 'bad apples' who engage in intentional wrongdoing. Many incidents of misconduct stem from broader cultural issues that create an attitude of non-compliance with policies or poor decision-making. A focus on culture within compliance programmes can be a critical tool that helps organisations manage the risk of misconduct.

As we set out in this guide, culture adds value in three core areas from a risk management perspective:

- Firstly, in the prevention of wrongdoing;

- Secondly, in the identification of any wrongdoing that slips through the net; and

- Thirdly, in a worst case scenario, in demonstrating to a regulator, prosecutor or other interested stakeholders that an effective and appropriate compliance programme has been operated and that an organisation has done all it reasonably could to prevent misconduct.

A framework for thinking about culture

Understanding why things go wrong – lessons learned from our experience

We have a wealth of experience of undertaking investigations worldwide and seeing first-hand the consequences of things going wrong. We advise on the most sensitive issues that businesses face – whether those are investigations into competition or regulatory breaches, boardroom disputes or material reputational issues.

Drawing upon our experience of investigations across a range of sectors and geographies, we carried out an empirical analysis of the underlying cultural factors that may have allowed misconduct to take place, whether as a direct cause or by creating an environment in which misconduct has been able to flourish.

On the basis of interviews with lawyers across our global network who have been involved in some of the major investigations on which the firm has been instructed, we identified 12 cultural factors present in environments in which misconduct or other problems occurred, in a range of countries and across a variety of sectors.

We grouped the 12 factors into three categories, depending on the frequency with which they arose in the investigations we reviewed.

A framework for thinking about culture

There are many examples of each of these factors arising in practice and there is frequently a degree of overlap between them. Not all of these factors can (or should, necessarily) be eliminated. Instead, the focus should be on identifying whether they are present, considering what risks they may pose and deciding what steps could be taken to reduce those risks.

The 12 factors have been tested by us as a framework to assess the culture of an organisation to good effect, through a combination of survey data and qualitative interviews. Using a framework approach can help organisations to give a structure to their efforts to monitor and test corporate culture, providing a starting point for the possible risk factors that it may be appropriate to test. It is important to remember that corporate cultures are not always simply 'good' or 'bad' – particular features can have both positive and negative consequences. For example, collaborative and supportive environments may be rewarding to work in but make individuals reluctant to challenge others or have difficult conversations with

underperformers who make mistakes and expose the organisation to regulatory risks. The key for organisations is to identify the risks or vulnerabilities arising from their own corporate culture and to think in practical ways about how to address those.

Having identified their list, an organisation can then ask itself important questions at all levels, from the board to middle management, as it moves towards managing risk – for example:

> **We know we have a strong personality in this area of the business, so who acts as the counter-balance to that person?**

> **This area of the business is particularly technical, so who from a risk and compliance perspective really understands it and can provide the right scrutiny?**

> **We have a whistleblowing policy and a hotline, but do our employees really feel able to speak up?**

A framework for thinking about culture

Culture can feel like a nebulous topic and one of the most difficult questions an organisation will ask itself is where to begin in tackling it. There is a danger that culture may be seen as a 'soft' issue that is the sole domain of HR, or that significant time and energy will be spent in focusing on culture without generating any measurable output.

We have set out our views and experience in this guide, using the following framework:

What are we talking about when we refer to 'culture', and what do we mean when we say that it can be a risk management tool?

Why does this matter?

Who should be accountable for an organisation's culture

Where within the business should an organisation focus its efforts?

When is it most important to focus on culture?

How can an organisation use culture in its risk management efforts?

What do we mean by culture?

There is a wealth of commentary and analysis on culture and how it should be defined. A typical definition that is offered is "how we do things around here" – a statement that is capable of capturing everything from the tone of internal discussions to an organisation's hierarchy, the respect afforded to colleagues, the fairness with which customers are treated, the way in which employees are remunerated and the willingness of staff to raise matters of concern. Culture is often mentioned in the same breath as 'values'. It may be easiest to consider these complementary concepts as follows:

Values	The principles that an organisation subscribes to, and which guide its approach.
Culture	The practices and processes operated by an organisation, through which it demonstrates its values.

We would add 'governance' to the suite of terms that organisations should be thinking about at the same time as culture. Governance arrangements provide the framework within which decision-making takes place, acting as a set of guide rails to assist an organisation to operate in a manner consistent with its values.

Each organisation must define its own values and desired culture. Undertaking that exercise, and communicating the results to the workforce, will lay the groundwork for everything that follows. Having set and communicated its desired culture, the next questions are likely to be:

• What is the gap (if any) between our desired culture and our actual culture; and

• How are we going to close that gap?

As lawyers, we do not specialise in organisational psychology and we make no attempt to look at culture through the lens of behavioural science. When we refer to culture, our focus is on the cultural factors that can expose an organisation to risk and how culture can be woven into compliance programmes and governance arrangements. Looked at through that lens, the exercise of setting, measuring and changing culture has a clear risk management purpose.

Why does this matter?

There are many stakeholders who are interested in the efforts that companies are making in respect of culture.

Media
Workforce
Regulators
Customers
Prosecutors
Competitors
Shareholders

The interests of some of these stakeholders in cultural issues are obvious. For example:

- the media may seize on a cultural news story as an opportunity to generate attention and attract viewers/readers;

- members of the workforce will care about the environment in which they are operating and how they are treated by their colleagues and managers;

- customers will care about an organisation's culture to the extent it impacts upon the fairness with which they are treated, and the level of service that they receive. Cultural factors can also impact reputation and brand, both of which can influence customer choices; and

- companies will have an interest in news stories about their competitors, whether positive or negative. The positive stories may provide food for thought and a catalyst for change, whilst the negative stories may demonstrate a weakness that is ripe for potential exploitation.

We have set out below in more detail the different perspectives of shareholders, regulators and prosecutors, to emphasise the importance of this topic and the need for it to receive attention at the highest levels.

Why does this matter?

Shareholders

To state the obvious, shareholders have an interest in the success of the companies in which they invest. If a focus on culture will enhance that success, whether through appealing to customers, acting as an effective risk management tool or withstanding the scrutiny of regulators or prosecutors, it represents good news for shareholders.

Institutional investors have acknowledged the role that culture has to play in a company's success. State Street Global Advisors, for example, stated in 2019:

'*This year we will be focusing on corporate culture as one of the many, growing intangible value drivers that affect a company's ability to execute its long-term strategy. We acknowledge that corporate culture, like many other intangible assets, is difficult to measure and manage. However, we also recognize that at a time of unprecedented business disruptions, whether in the form of technology, climate or other exogenous shocks, a company's ability to promote the attitudes and behaviors needed to navigate a much more challenging business terrain will be increasingly important. We all know the old chestnut that culture eats strategy for breakfast, but studies show that intangibles such as corporate culture are driving a greater share of corporate value, precisely because the challenges of change and innovation are growing more acute.*'[1]

We include within the 'shareholder' category the expectations that are placed upon quoted companies by industry bodies and relevant regulators. In the UK, the Corporate Governance Code published by the Financial Reporting Council sets out the principle that boards of directors are responsible for corporate culture:

'*The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are aligned. All directors must act with integrity, lead by example and promote the desired culture.*'

It goes on to state that:

'*The board should assess and monitor culture. Where it is not satisfied that policy, practices or behaviour throughout the business are aligned with the company's purpose, values and strategy, it should seek assurance that management has taken corrective action. The annual report should explain the board's activities and any action taken.*'

In its Annual Review, published in January 2020, the Financial Reporting Council stated clearly its high expectations of boards of directors when it comes to setting and testing culture, and commented on the limited (voluntary) reporting it had observed to date:

'*The FRC recognises that leading and maintaining the right culture for a company requires long-term commitment by the board. It was disappointing that only a small number of boards disclosed that they already receive reports on culture to aid discussions, especially as the importance of corporate culture was raised by the FRC more than three years ago. Moreover, only a few reported that it had a specific agenda item on alignment of culture with values and strategy.*'

The direction of travel is clear: culture is a topic with which the most senior individuals within a company must engage. Moreover, they must be able to explain what that engagement has involved.

[1] https://corpgov.law.harvard.edu/2019/01/15/2019-proxy-letter-aligning-corporate-culture-with-long-term-strategy/

Why does this matter?

Regulators and prosecutors

Organisations in the financial services industry will be well-versed in the topic of culture and the focus by their regulators and industry bodies on it. To give just a few examples:

UK Financial Conduct Authority:

In its March 2018 paper on Transforming Culture in Financial Services, the FCA stated that '*Culture in financial services is widely accepted as a key root cause of the major conduct failings that have occurred within the industry in recent history.*' It added that '*Given its impact and the role it needs to play in re-building trust in financial services, firms' culture is a priority for the FCA.*'

Federal Reserve Bank of New York:

John Williams, President of the NY Fed, said in a speech in January 2020, '*...culture is both the hardest and the most important thing to get right. Culture is at the heart of behavior and norms, and the single most important factor driving the decision-making of employees. It's not an exaggeration to say that culture is critical - both when things go right, and when they go wrong.*'

Hong Kong Monetary Authority:

In March 2017, the HKMA initiated a bank culture reform, seeking to encourage banks to '*develop and promote a sound corporate culture that supports prudent risk management and contributes towards incentivising proper staff behaviour that will lead to positive customer outcomes and high ethical standards in the banking industry, so that banks put their safety and soundness as well as the interests of depositors and customers at the centre stage in the pursuit of commercial interests.*'

Financial Stability Board:

The FSB, in its toolkit on 'Strengthening Governance Frameworks to Mitigate Misconduct Risk', said that '*A firm's culture plays an important role in influencing the actions and decisions taken by employees within the firm and in shaping the firm's attitude toward its stakeholders, including supervisors and regulators. It also may allow or encourage misconduct by individuals, or large numbers of employees, particularly if instances of misconduct are overlooked.*'

Why does this matter?

Regulators and prosecutors – continued

The focus on culture is not confined to the financial services industry. It transcends sectors and is a relevant factor for prosecutors when considering the culpability of companies in which wrongdoing has occurred. The UK's Serious Fraud Office published in January 2020 its views on evaluating corporate compliance programmes. It cited with approval the guidelines published by the Ministry of Justice on the UK Bribery Act, in which there are notable references to culture, with emphasis being placed on the role of the board to 'foster a culture in which bribery is never acceptable.'

The US Department of Justice's guidelines on effective compliance programmes refer heavily to the 'culture of compliance' and ask:

'How often and how does the company measure its culture of compliance? Does the company seek input from all levels of employees to determine whether they perceive senior and middle management's commitment to compliance? What steps has the company taken in response to its measurement of the compliance culture?'

The presence or absence of an effective compliance programme can be a key feature in the decision as to whether to prosecute an organisation or to invite negotiation of a deferred prosecution agreement (DPA). DPAs are a prevalent feature of the US litigation landscape, are gaining momentum in the UK and may soon be introduced in Australia. In deciding whether to invite a party to enter into DPA negotiations, public interest factors for and against prosecution will be weighed. These will include the presence or absence of a pro-active corporate compliance programme at the time the offence was committed. If a DPA is put in place, there will be an inevitable and ongoing focus on the effectiveness of the organisation's compliance programme, most likely overseen by a monitor. Cultural factors contributing towards the success of that compliance programme will therefore be highly relevant.

Regardless of which stakeholders are the most relevant for an organisation, it is clear that a focus on culture is becoming a matter of international best practice and a necessary area of focus at the highest level.

Who should be accountable for an organisation's culture and where within the business should an organisation focus its efforts?

We have addressed the 'who' and 'where' questions together as they are closely linked. The board of directors is usually cited as the starting point for setting culture, and that expectation is made clear in the statements referred to earlier in this guide. In light of this, any director should be able to do the following:

- Articulate the organisation's values and culture;

- Explain how culture is assessed, what gaps have been identified and the steps that are being taken to address them; and

- Understand and test the organisation's progress against its stated cultural goals.

While ultimate accountability for an organisation's culture may most logically rest at the top, a culture programme which fails to permeate throughout the organisation is unlikely to be effective. In cascading a culture programme, the buy-in of the various layers of management will be critical, and that buy-in may best be achieved by placing some accountability for culture at their door.

As well as considering who within the business should be accountable for culture, organisations must consider where to focus their efforts. In a speech delivered in June 2019, the Chair of the Supervisory Board of the European Central Bank stated that:

'*The tone from the top has an important role to play, but it is not enough: a sound culture has to be embedded at all levels of the organisation, with particular attention to middle management and frontline business…*

… The first line of defence is where a cultural shift is needed most, and still lags behind at many banks. The frontline business units, at all levels, should continuously check whether their behaviour is in line with the declared values and desired conduct of the bank. They sometimes fail to do so because they are obsessively focusing on meeting quantitative targets, for instance. If this is the case, though, it is very difficult for the other two lines of defence to ensure proper behaviour and a genuine and lasting cultural shift. Only when a strong risk culture and sound standards of conduct are fundamentally embedded in the behaviour of the business areas will good decisions become the norm.'

The idea that the focus on culture should occur throughout an organisation and include frontline business units at all levels may be daunting. For practical purposes, there may be merit in undertaking a risk assessment and focusing first on specific areas of the business – eg those that would present the greatest overall risk if misconduct were to occur, or those where an assessment of culture has demonstrated that a worrying gap exists between intention and reality.

Who should be accountable for an organisation's culture and where within the business should an organisation focus its efforts?

Although the ECB speech quoted on the previous page related to banks in particular, the core message translates well to other industries. Whatever sector an organisation is in, the strength of any messaging around culture (and in turn, the effectiveness of culture as a risk management tool) depends on its promotion throughout the organisation. There is a need to move beyond the age-old focus on tone from the top – or, at least, to understand that the 'top' can mean different things for different people. To a junior employee in a remote area of the business, the board of directors may feel impossibly remote and irrelevant to their day-to-day work. For them, the 'top' for all practical purposes may be a country manager, the head of a business unit or even their direct line manager. The messaging and tone from that person will therefore be as (if not more) important than that of the board.

The US Department of Justice refers in its 'Evaluation of Corporate Compliance Programmes' guidance to the importance of the compliance message flowing down through an organisation:

'*The company's top leaders – the board of directors and executives – set the tone for the rest of the company. Prosecutors should examine the extent to which senior management have clearly articulated the company's ethical standards, conveyed and disseminated them in clear and unambiguous terms, and demonstrated rigorous adherence by example. Prosecutors should also examine how middle management, in turn, have reinforced those standards and encouraged employees to abide by them.*'

The key for the board and senior management, having set the tone, will be to understand and test whether and how their message permeates and to have access to sufficient information to allow that testing to take place.

When is it most important to focus on culture?

The default answer to this question is that culture should be a constant feature on an organisation's agenda and a matter to which its senior management has continuous regard. Inevitably, though, there will be times when the focus on culture is greater. We have considered the 'when' question in two ways:

- At what stage in the cycle of risk should efforts be focused?
- What are the culture 'triggers' which might cause an organisation to focus on (or revisit) aspects of its culture?

The risk cycle

In an ideal world, efforts would concentrate on the use of culture to prevent wrongdoing and would achieve total success. However, some things will slip through even the most tightly-drawn preventative net – whether because there are rogue 'bad actors' within an organisation or employees who inadvertently stray off course. This means that detection is important. If wrongdoing cannot be stopped in the first place, the next best thing is to spot it early so that any damage can be contained. The ability and willingness of employees to raise concerns plays a huge role in detection, meaning that a speak-up culture is important.

After detection, the next step is investigation. Appropriate triage and consideration of the issues raised by any reported incident is critical, and another culture test is the ability of different functions (HR, Legal, Compliance, Internal Audit) to work together to best identify and address risks.

Finally, remedial steps have a role to play in managing further risk. Culture forms a part of that, whether in identifying the root causes of things going wrong or in the steps taken to prevent a recurrence. The key message from our experience is the importance of learning lessons from the problems that arise and thinking about everyday steps that can be taken to manage these sources of risk.
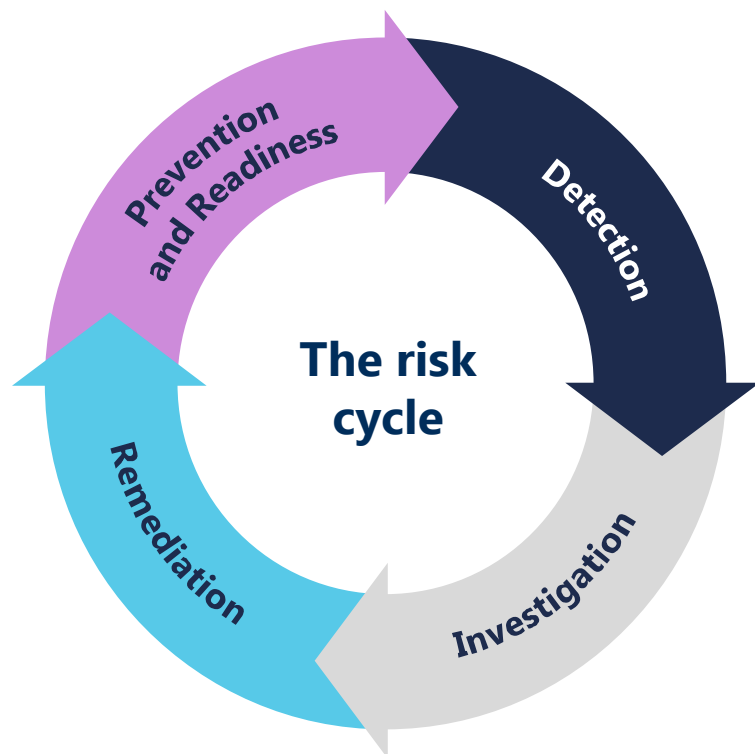
The risk cycle

Prevention and Readiness

Detection

Investigation

Remediation

When is it most important to focus on culture?

Triggers for a focus on culture

Particular events in an organisation's life cycle, or wider market conditions, may trigger a need or desire to focus on culture. These include:

M&A Activity

The combining of two (or more) businesses, which may have different risk appetites and risk management frameworks, is an obvious time to stand back and take a holistic look at culture and governance and to consider how best to achieve consistency or reduce conflict.

Changes in Leadership

If culture is set at the top of an organisation, then a change in leadership is an obvious point at which a period of reflection might occur – not necessarily with a view to changing culture, but at least to measuring it and understanding whether any stated objectives have been met.

Near-misses or reported incidents

'Never waste a crisis' is the mantra of many lawyers and compliance heads. Some of the most valuable lessons about an organisation's culture and risk exposure can be learned through a root cause analysis following a near-miss or an incident of wrongdoing.

Changes in legislation or guidance

The introduction of new legislation or regulatory or prosecutorial guidance might cause an organisation to revisit its risk management framework and its effectiveness. A consideration of culture in connection with that assessment is a worthwhile exercise

Responding to feedback

Employee engagement surveys and exit interviews are a valuable means of assessing an organisation's progress against its cultural objectives. Unexpected or negative results may prompt a focus on particular areas of concern.

Peer group problems

When a crisis hits a competitor, it might be time for an organisation to turn its attention inwards and consider whether it faces exposure to similar risks, and whether those risks are being effectively managed.

How should an organisation use culture in its risk management efforts?

The most important (and challenging) question is how an organisation should use culture to assist in its risk management efforts.

The first point to make is that efforts need, to a large extent, to be bespoke to an organisation. The risks faced by organisations are specific to the jurisdictions and industries in which they operate and, in some cases, the individuals whom they employ. Nevertheless, there are some core steps that all organisations can consider and, in our experience, some cultural risk factors that transcend industries and geographies.

We outlined on pages 3 and 4 the lessons learned from our experience of the cultural factors that can play a part in things going wrong. The key for any organisation is to identify the risks arising from its own corporate culture, and to use that list as the basis for its risk management efforts.

How should an organisation use culture in its risk management efforts?

Practical ways to test culture

Once an organisation has articulated its desired culture and identified a list of the points that it may wish to stress-test, the next step is to identify the tools that might be used to undertake any assessment. Again, there is not a one-size-fits-all answer, but all or some of the following may be useful:

Employee surveys	Employee surveys can capture views on a range of topics and are a useful tool for measuring attitudes and awareness. A critical point if organisations are going to use surveys is being prepared to address both the positive and negative information flowing from them, and taking steps to resolve any concerns highlighted.
Exit interviews	Exit interviews are a rich source of information (and, some might say, the most revealing in terms of cultural issues as a departing employee may feel more willing or able to speak candidly than at any other time). Carrying out trends analysis and looking for patterns in exit interview data is important, as well as reporting on that data (on an anonymised basis, as appropriate) to ensure that senior stakeholders are aware of the trends emerging or can spot red flags.
MI from whistleblowing hotlines	Whistleblowing reports are a rich source of data (albeit one which often requires some 'sifting', to separate day-to-day workplace complaints from more serious or systemic issues). Again, trends analysis is key – assessing whether there are hot spots within particular business areas or geographies, or particular patterns of behaviour emerging which may point to wider cultural issues. Equally, data on usage of the whistleblowing hotline can be useful. Low usage rates can be as worrying as a high number of reports, and may indicate a lack of awareness or a lack of willingness to use this route for raising issues.
Audits – specific or general	Audits targeted at culture (or specific cultural issues) are increasingly popular and a range of providers are emerging. Key points to think about when considering an audit include: (i) what is the organisation's desired culture; (ii) what are the particular 'worry' areas on which any audit should focus; (iii) what does the organisation want to achieve through the audit; (iv) who will be responsible for taking forward any learnings or recommendations; and (v) how will success be measured?
Lessons learned exercises	'Lessons learned' exercises often focus on one particular issue rather than looking holistically across a range of issues. The tendency in the aftermath of a crisis is to focus on the immediate conduct and systems and controls issues rather than the impact of the corporate cultural environment in which the problems occurred. Standing back and looking holistically at the organisation's recent (and more historic) experience is likely to be more culturally revealing. The exercise may give a valuable data point to look at in developing culture in a practical and meaningful way.

How should an organisation use culture in its risk management efforts?
Practical ways to test culture - continued

It is likely that a combination of tools will need to be deployed to test culture. The UK's Financial Reporting Council, commenting on annual reporting by companies on their efforts to assess and monitor culture, noted that the main tool used by companies:

'ap*peared to be employee engagement surveys, with the main metric being completion rates of such surveys. While these are beneficial, they only provide a snapshot of information and should not be used in isolation.'*

The FRC went on to state that 'Very few companies cited more than three metrics used to monitor and assess culture. Linking different sources of information together will help companies better understand their culture.'

Tools to shape culture and manage misconduct risk

Once any assessment exercise has been undertaken, consideration will turn to how to effect meaningful change and to close any gaps identified between intention and reality. In the context of approaching culture as a risk management exercise, the following steps may prove useful. Many of these factor into the design of an effective compliance programme.

There is a careful balance to be struck between demonstrable, measurable procedures and less structured approaches that are designed to win over hearts and minds in the fight against misconduct risk. While there is an evident shift towards behaviour-based compliance efforts, there is also a place for rules and the need to be able to measure compliance in order to demonstrate effectiveness. Whichever end of the spectrum an organisation may gravitate towards, culture is likely to be a core part of its compliance efforts.

Linkage between culture and remuneration

There is a widely accepted link between remuneration and behaviour – in particular, the notion that inappropriate performance metrics (to which remuneration is tied) could drive inappropriate behaviour. Conversely, having the right performance metrics might incentivise behaviour that is better aligned with the organisation's culture and values.

In the financial services sector, this link has been addressed through strict requirements around employee remuneration, including tools such as malus and clawback, deferral and payment in share-based instruments to better align employees with the long-term interests of the company and its shareholders. Outside the financial services sphere, corporate governance requirements place emphasis on the link between remuneration and long-term sustainable performance. Remuneration committees may wish to consider whether there is more that could be done – eg setting specific key performance indicators which are directly linked to culture (whether at an individual, business unit or group-wide level) and demonstrating a willingness to impact remuneration (negatively or positively) based on an employee's alignment with culture and values.

How should an organisation use culture in its risk management efforts?

Tools to shape culture and manage misconduct risk

Training	Training is a key pillar in the management of misconduct risk, and ensuring that it is as effective as possible is critical.
	There is evidence of an evolving approach to training. For example, many organisations are focusing strongly on emotion, storytelling and making the misconduct 'feel personal' to make their training impactful. Other possible approaches include working cultural concerns (ideally bespoke to the organisation, based on any prior assessment of its culture) into training by using case studies that reflect possible real-life scenarios within the organisation, in order to understand how people would react and to give them strategies for future use.
	Not only is it key to ensure attendance at and completion of training, it is also important for organisations to consider appropriate follow-up actions, allowing them to test the effectiveness of that training - the classic example is a fake phishing email after cybersecurity training.
Demystifying the whistleblowing process	Having a strong speak-up culture is a critical part of any organisation's compliance efforts. Although prevention will always be better than cure, it will not be possible to prevent every incident of misconduct or poor decision-making. An important fallback is the ability for an organisation to spot issues as early as possible, so that problematic conduct can be stopped and appropriate remedial action taken. However well-resourced a Compliance function may be and however sophisticated its monitoring and surveillance, using the eyes and ears of the workforce to spot issues is of fundamental importance.
	Information can be a powerful tool in cultivating a healthy speak-up culture. This can range from training sessions on how the organisation's whistleblowing system works, explaining the end to end process and what employees might expect if they report a concern, to feedback provided to employees who have raised concerns. Feedback is particularly important in mitigating the feeling of futility that many whistleblowers report. A perception (whether right or wrong) that a reported concern has disappeared into a black hole is likely to have a chilling effect on speak-up culture.
Multi-disciplinary teams	Working horizontally across teams can be valuable in tackling misconduct risk, given the different perspectives that are brought to the table. The willingness and ability of cross-functional teams to work together is an aspect of culture which it may be beneficial to address as part of designing any compliance programme.
	Legal, Compliance and Audit teams should be conscious of the need to draw the threads together when separate issues are raised, in case there is in fact a bigger underlying issue requiring investigation. Employees may only complain about part of a problem because they may not have sight of the full issue. Because of this, it is important to stand back and look at the totality of complaints and investigate what they are saying about the organisation. It is also why it is important for different functions to work together and pool knowledge and experience – it may only be when a group of functions come together that they collectively spot a trend or a bigger problem.

How should an organisation use culture in its risk management efforts?

Tools to shape culture and manage misconduct risk – continued

A greater focus on behaviours and principles, rather than rules and regulations.	Despite the importance of clear rules, a focus on behaviours that are problematic could help address a range of potential legal, regulatory and compliance issues in a more effective way than prescriptive rules and policies. There are specific behaviours that underlie or could indicate misconduct or legal risk – for example, failure to challenge suspicious activity or dubious instructions, or demonstrating a disregard for 'low-level' compliance requirements. From a practical perspective, focussing on behaviours might include: Defining what good behaviour looks like through training, performance reviews and communications. Encouraging people to raise issues if they see behaviours that fall short of that standard (even if they cannot articulate a specific legal violation). Recognising and rewarding good behaviours. Providing frameworks to assess behaviours. Tracking what behaviours give rise to legal or regulatory breaches and using that data to develop future training or monitoring techniques. There remains a place for rules (eg an anti-bribery policy), not least to assist companies in demonstrating they have taken reasonable steps to prevent particular actions, but a programme of focusing more holistically on behaviours and principles could be a powerful complimentary tool.
Response to incidents – disciplinary action	There is a clear expectation by regulators and prosecutors alike that organisations will take decisive action in response to wrongdoing. From an employment perspective, this is likely to mean disciplinary action. Organisations should be ready to explain what steps they have taken (or not taken). Dismissal will not always be the correct answer, whether because of employment law constraints or a strong feeling that an employee has learned their lesson and can act as a positive culture carrier in the future. Nevertheless, if the individuals who engaged in any identified misconduct remain employed, organisations should be ready to explain why that decision has been made. As well as giving a strong message to third parties, disciplinary action can have an impact on the culture within an organisation. Demonstrating to employees that certain conduct has been met with a zero tolerance response can be a powerful tool in emphasising an organisation's commitment to its stated culture.

How should an organisation use culture in its risk management efforts?

Tools to shape culture and manage misconduct risk – continued

Understanding and using data

Data, in the form of employee engagement surveys, exit interviews and trends analysis, can be incredibly useful in providing information about aspects of an organisation's culture. Equally, that data can inform the steps that are taken to make improvements.

Boards and senior management should consider the quality of the data that is presented to them, and whether it is sufficient to give them a meaningful picture of the issues that are arising within the business. For example, do they know:

- The recent trends in whistleblowing within the organisation – eg the business or geographical areas from which the most reports originate, or which have seen a spike or dip in recent reporting

- The number of incidents of alleged retaliation against whistleblowers in the last 12 months, and how this has changed from year to year

- What the prevailing themes emerging from exit interviews were, and how employee retention rates have changed as compared to prior years

- How (if at all) remuneration is linked to non-financial indicators such as embodiment of the organisation's culture and values

Assuming that the data flowing upwards to management is sufficient to allow meaningful consideration, the next question is whether any changes can be demonstrated as a result of that information flow – eg recommendations made and implemented, or investigations undertaken into worrying patterns.

Board culture sessions

Different boards may have different views on how they wish to tackle culture but, whatever their approach, they should be able to articulate the steps that they have taken. Part of this exercise is likely to involve a review of the types of data referred to above (not necessarily in painstaking detail, but at least in terms of understanding and responding to the trends analysis that has been undertaken).

Some boards like to have 'culture' as a standing agenda item, to focus the mind on this topic and to create a paper trail of the actions being taken. For others, this may feel like the wrong approach, particularly if their view is that culture must permeate all of the decisions being taken rather than being viewed as a topic in isolation. There is no right or wrong answer to this, provided that the board has turned its collective mind to how it intends to address culture and chosen its preferred approach.

Where next?

We would be delighted to talk to you in more detail about our experience, and practical steps that we have seen other organisations take to assess and strengthen their corporate culture and to manage misconduct risk.

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