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WALKER MORRIS

In this issue

Shining a light on... you.

Welcome to the latest edition of Illuminate. We're excited to bring you a collection of insightful articles, interviews, and practical guides on the topics that matter most to you.

This edition focuses on the increasingly critical area of ESG (Environmental, Social, and Governance). As ESG continues to climb the corporate agenda, the role of General Counsels (GCs) in steering these initiatives has never been more vital. With heightened scrutiny from regulators, stakeholders, and consumers, it's essential for businesses to integrate ESG into their core strategies effectively.

In this edition we:

- Address practical approaches to integrating ESG into your supply chain, focusing on the much-discussed 'E' of ESG.
- Explore how GCs can move beyond compliance to lead the charge on ESG strategy, identifying opportunities and mitigating risks.
- Discuss how law firms can support businesses in embedding ESG effectively, ensuring that initiatives are robust and credible.
- Talk to Kunaal Wharfe, General Counsel at Leeds Bradford Airport to hear how he believes the role of GC can make the most impact.
- Provide the latest updates on AI, fraud prevention, employment law, climate reporting, and data and cybersecurity.

If you enjoy reading this, please make sure you sign up to receive future editions delivered directly to your inbox.

Want more? Our online Illuminate hub is brimming with resources to help you develop in your role and manage your relationship with law firms.

Simon Clark

Simon Clark,
General Counsel, Partner,
Walker Morris

Addressing ESG in your supply chain: A practical approach

Businesses are addressing the legal, regulatory, and commercial pressures to get their ESG approach right in house. But recent and forthcoming developments indicate the need for businesses also to address ESG issues in their supply chain.

Our sustainability and supply chain specialists, Ben Sheppard and James Crayton, explain what businesses need to know, and the practical steps they can take to safeguard human rights and sustainability in their supply chain.

ESG responsibility and reporting: Supply chain now in scope

For some time now, businesses have known they need to address legal, regulatory, and commercial pressures to get their ESG approach right.

But recent and upcoming legal developments highlight the need to extend this focus to address ESG issues in their supply chain:

- A recent Court of Appeal case (**World Uyghur Congress, R (on the application of) v National Crime Agency** [2024] EWCA Civ 715) suggests companies could face the possibility of an investigation by regulators if there's any suggestion that criminal property, money laundering, or labour/human rights abuses may have been involved anywhere in their supply chain.
- A group of institutional investors are suing Boohoo over a drop in its share price linked to ESG disclosures relating to factory workers.
- A recent report by the House of Lords Select Committee on the Modern Slavery Act 2015 recommends amendments to the existing regime underpinning slavery and human trafficking statements, and the introduction of mandatory modern slavery due diligence in supply chains.
- The European Parliament has approved a new regulation, known as the Forced Labour Regulation, enabling the EU to prohibit the sale, import, and export of goods made using forced labour. Member state authorities and the European Commission will be able to investigate suspicious goods, supply chains, and manufacturers. If a product is deemed to have been made using forced labour, it will no longer be possible to sell it on the EU market (including online) and shipments will be intercepted at the EU's borders.
- The upcoming EU Deforestation Regulation will require importers of certain products to ensure deforestation or forest degradation hasn't occurred at any point.
- In June 2024, the Supreme Court considered a planning application to expand an oil well. It held, in **Finch v Surrey County Council** [2024] UKSC 20 that it was unlawful for the Council not to require the environmental impact assessment to cover the impacts of greenhouse gas emissions which would result from use of refined products of the extracted oil. So, effectively Scope 3 emissions. (Scope 3 emissions are indirect upstream and downstream emissions that occur in the value chain of the reporting company, but that are not within its direct control).

And there are corporate reporting drivers too:

- In their annual financial report, UK incorporated companies with a premium listing should provide, on a 'comply or explain basis', a statement setting out whether they've made climate-related financial disclosures consistent with the Taskforce on Climate-related Financial Disclosure (TCFD) recommendations (see below).
- In June 2023, the International Sustainability Standards Board (ISSB) published its first set of sustainability disclosure standards. The standards fully incorporate the recommendations of the TCFD. The TCFD recommendations include the expectation that companies disclose Scope 3 emissions where they form a significant portion (i.e. 40% or more) of their overall greenhouse gas emissions.
- On 3 October 2023 the Financial Reporting Council confirmed that the UK government has committed to assess and endorse the ISSB's sustainability disclosure standards for use in the UK. The Financial Conduct Authority (FCA) has separately confirmed that it intends to update its existing rules on climate-related reporting for listed companies (which are based on TCFD recommendations) to refer to the UK-endorsed ISSB standards.
  - In May 2024, the government published a framework and terms of reference for the development of UK Sustainability Reporting Standards. The framework sets out the assessment, endorsement and implementation process and timetable for the International Financial Reporting Standards Sustainability Disclosure Standards (IFRS SDSs).
  - In June 2024, the ISSB published its feedback statement for 2024 on the IFRS SDSs. The plans support disclosure requirements under IFRS S2, Climate-related disclosures, and aim to decrease fragmentation in the market. During the next 2 years, the ISBB will deliver further harmonisation of the sustainability disclosure landscape.
- The EU Corporate Sustainability Reporting Directive (CSRD), which will require first reporting to be commenced for in-scope entities on a phased bases from 2025 to 2029, aims to provide investors and other stakeholders with access to more decision-useful information about companies' sustainability risks, opportunities, and impacts. It mandates reporting on a range of ESG topics in accordance with the European Sustainability Reporting Standards. The CSRD requires in-scope corporate entities (including EU companies and non-EU companies with EU activity) to describe their supply chain, to undertake 'materiality assessments' of the ESG impacts of the business and its supply chain, and to report accordingly.
- And, after a two-and-half-year legislative journey, the Corporate Sustainability Due Diligence Directive (CSDDD) has been formally adopted and will introduce mandatory human rights and environmental due diligence requirements for large EU companies, and non-EU companies operating in the EU. In-scope companies will need to identify and address adverse human rights and environmental impacts in their own operations and throughout supply chains. The new rules will become applicable according to a staggered timeline (largest to smallest companies, then franchisors/licensors) between July 2027 and July 2029.

> "Recent and forthcoming developments indicate the need for businesses also to address ESG issues in their supply chain."

Addressing ESG in your supply chain:
A step-by-step approach

With these developments in mind, how can you take practical steps to address ESG in supply chains?

Step 1: Understand the challenge

Firstly, you need to know what sustainability/ESG covers, and which aspects are most relevant to your operations — both internally and throughout the supply chain:

Environment	Social	Governance
Climate change, emissions	Diversity and inclusion	Bribery, corruption
Waste, pollution	Working conditions (slavery, child labour, employee relations, health and safety)	Executive pay
Resource depletion	Communities (local, indigenous, humanitarian issues)	Fair taxing

Step 2: Outline an approach

A successful, practical approach to addressing sustainability requires leadership from the top down, including the right cultural messaging and dedicated resource, combined with business-wide data, operational and contract reviews, training and ongoing monitoring:

From the top

- Senior people from across the organisation need to foster a sustainability culture. That may involve:
  - Introducing sustainability related financial incentives for senior leaders.
  - Appointing a Head of Sustainability/or sustainability committee.
  - Ensuring consistent messaging, both internally and externally.

Across the business

- Break sustainability/ESG down into component areas and designate responsibility for each.
- Collect, review and report on sustainability metrics, using data.
- Undertake contract reviews and consider using new sustainability/ESG-friendly standard contractual clauses.
- Consider the sustainability credentials of investors, supply chain components and other stakeholders.
- Train staff – at all levels, and regularly – on general and specific sustainability issues.
- Monitor national and international legal, regulatory and assessment developments.
- Keep accurate and up-to-date records of all sustainability activities, initiatives and disclosures/statements/environmental reporting.

Step 3: Implement

Specific actions can then address each area, such as:

Environment

- Audit all aspects of the business which have an environmental/climate change impact.
- Consider own/subsidiaries/investors/ supply chain third parties' products, processes, policies.
- Ask:
  - Can energy/emissions/waste be reduced? How?
  - What green claims are being made and can they be substantiated (beware 'greenwashing')?
  - Can climate-friendly contract clauses be used in existing or new relationships?
- Keep up-to-date/comply with legal, regulatory and environmental reporting requirements.

Social

- Audit all aspects of the business which have a social impact – on the workforce and on any outside communities.
- Consider own/subsidiaries/investors/supply chain third parties' products, processes, policies.
- Review and maintain robust data protection and privacy policies and procedures.
- Review and maintain robust, inclusive diversity policies and procedures.
- Review and maintain policies and procedures to ensure fair working conditions.
- Consider the mental, as well as the physical, health and wellbeing of the workforce.
- Be clear, consistent, fair, transparent and proactive when communication with employees and other parties.
- Beware, in particular, modern slavery and human trafficking. Ignorance/turning a blind eye will not suffice.
- Keep up-to-date/comply with legal, regulatory and environmental reporting requirements.

Governance

- Be transparent about executive pay and pension contributions.
- Consider how executive remuneration compares to the rest of the workforce and make adjustments where necessary.
- Consider how the workforce remuneration compares to the market and make adjustments if necessary.
- Conduct the due diligence into own/subsidiaries'/investors'/supply chain third parties' products, processes, policies in respect of corruption and bribery.
- Note the director's reporting duties and duties under corporate law to act in the best interests of the company.
- Make specialist advice on fair tax strategies.
- Keep up-to-date with legal, regulatory and environmental reporting requirements.

The Corporate Sustainability Due Diligence Directive (CSDDD)

We've mentioned that the CSDDD is on its way. It's an ambitious, wide-ranging and demanding piece of legislation that will have a considerable administrative impact. But compliance will help shape and future-proof your ESG approach. It will support your contribution, in a very tangible way, to positive global change for human rights and the environment.

The CSDDD requires in-scope companies to take various steps to manage actual and potential negative impacts of their/their supply chain partners' activities on human rights and environmental matters. Captured activities will include:

- The activities of a company's upstream business partners related to the production of goods or the provision of services by the company (including the design, extraction, sourcing, manufacture, transport, storage, and supply of raw materials, products or part of the products and development of the product or the service).
- The activities of a company's downstream business partners related to distribution, transport, and storage.

The CSDDD sets out certain core due diligence obligations to identify, assess, prevent, mitigate, put a stop to, and/or to remediate adverse impacts. It also requires meaningful stakeholder engagement, regular monitoring, and public communication.

One particularly important obligation will be for companies to adopt and put into place a climate transition plan. In October 2023, the Transition Plan Taskforce (TPT) published its Disclosure Framework, which sets out good practice recommendations for making robust and credible disclosures about climate-related transition plans. The Disclosure Framework is a key component of the TPT's wider materials. See our related briefing on climate transition planning.

Other measures that businesses may be expected to take include:
- Developing and implementing prevention plans.
- Seeking contractual assurances from business partners, accompanied by measures to verify compliance.
- Making necessary financial or non-financial investments, adjustments or upgrades to operational Processes and infrastructures.
- Modifying business plans, strategies and operations, including purchasing, design and distribution practices.
- Providing targeted and proportionate support to supply chain partners.
- Providing remediation.
- Where necessary, terminating business relationships.

Working together

Finally, formulating, implementing, maintaining, and developing an effective ESG strategy in-house and across the supply chain isn't something that you have to tackle alone. Sustainability and supply chain specialists can help with:
- Internal and upstream/downstream supply chain audits, contract reviews and contract negotiations/re-negotiations and/or terminations.
- Drafting and implementing sustainability and due diligence policies and procedures.
- Keeping you updated and informed on sustainability-related legal and regulatory developments.
- Providing tailored training to staff at all levels.
- Assisting you in securing 'green finance' or investments based on sustainability criteria.
- Delivering low carbon, sustainable and other 'green' projects.
- Assisting with measuring and reporting of energy, carbon, climate and human rights risks.
- Designing and implementing effective transition planning strategies and reporting.
- Providing comprehensive, cross-disciplinary advice and transactional assistance.
- Risk management and dispute resolution strategies if/when sustainability or due diligence queries, concerns or investigations arise.

Questions on ESG reporting and due diligence across your business and supply chains? Please contact James Crayton or Ben Sheppard.

Beyond compliance: How GCs can lead the charge on ESG

ESG is now a top priority for companies, with growing pressure from regulators, stakeholders, and consumers. As a result, GCs are no longer confined to compliance; they're expected to influence and lead ESG strategy.

In this conversation, ESG consultant and former GC Steven Webb shares his insights on how GCs can play a pivotal role in shaping a company's ESG efforts.

From your experience, what role should General Counsels (GCs) play in shaping ESG strategy? How does this differ from the more compliance-focused roles they typically take on?

GCs usually have a really broad and well-rounded view of the business. Unlike a lot of our colleagues, our legal work touches multiple areas — we're involved with suppliers, customers, and we often support departments like Finance, HR, and IT. So, we get to understand their unique challenges and opportunities. Plus, GCs are typically part of the senior executive team, involved in high-level strategy discussions where ESG should be a key focus. Given all that, we're in a prime position to identify ESG-related opportunities and risks, and to help the business adopt strategies that both align with its goals and minimise risk.

So, how's this different from the compliance role GCs are often expected to fill?

The difference is that instead of just focusing on what might go wrong — which is the traditional compliance mindset — GCs should also be looking for opportunities. It's about being proactive and helping the business see where ESG can drive growth or innovation, not just managing potential pitfalls.

What kind of ESG-related opportunities should GCs be communicating to the C-suite? And how can they frame these opportunities effectively?

On the most basic level, cutting carbon emissions can reduce costs — think lower energy consumption or using IT better to cut down on travel. And with energy prices going up and solar panel costs dropping, the return on investment for generating your own renewable energy is becoming more attractive.

But there's more. Customers are increasingly using sustainability as a factor when choosing products or services, and employees — especially younger generations — care deeply about this. In fact, Deloitte's recent Gen Z and Millennial survey found that 72% of respondents consider a company's environmental policies important when evaluating employers. Two out of ten had already changed jobs to align their work with their values. So, the right ESG actions can not only cut costs, but also attract and retain talent and customers. Framing ESG in terms of these direct business benefits is key to getting buy-in from the C-suite.

That's really compelling. On the other hand, what are the biggest ESG-related risks companies face today? How can GCs help businesses address them?

The biggest risks are often just the flip side of those opportunities. If your competitors are more sustainable, you risk falling behind. If you're not perceived as responsible, you could lose key talent or struggle with recruitment. So, by helping the company identify and act on ESG opportunities, GCs are already addressing those risks.

Another key area is ensuring that a company's ESG claims are genuine and can be backed up with evidence. Greenwashing accusations are becoming more common and more damaging. GCs need to be familiar with guidelines like the Advertising Standards Authority's CAP Code and the Competition and Markets Authority's Green Claims Code to help companies stay on the right side of the line.

How can GCs integrate ESG considerations into a company's risk management framework without making things overly complex?

ESG risks should be treated like any other business risk. They should be part of the company's overall risk assessment and management processes. And really, every department needs to be thinking about ESG, even if they don't always call it that. Take gender pay gap reporting, for example. It's highlighted businesses with poor gender diversity, which is typically handled by HR or recruitment teams. But the issue isn't just reputational — McKinsey's research has shown a strong link between executive diversity and financial performance. So, lack of diversity is a business risk, not just an ESG issue. It's all interconnected, and that's how ESG should be integrated into risk management.

How can GCs ensure that companies aren't just ESG-washing, but are putting in place meaningful initiatives that can withstand scrutiny from regulators and stakeholders?

This is an area where GCs really come into their own. We're used to verifying statements for accuracy and looking for supporting evidence. Ideally, any ESG initiatives should be backed up by quantitative data — measurable reductions in greenhouse gas emissions, lower waste output, greater diversity at senior levels, things like that.

Sometimes it's also worth getting independent verification too, like bringing in a carbon accounting firm to measure the company's carbon footprint or seeking certifications like B Corp accreditation. That adds credibility and ensures that the initiatives are meaningful and not just for show.

How do you think GCs can stay ahead of compliance requirements while also preparing for future shifts in ESG expectations?

Honestly, it's not much different from staying on top of any other area GCs deal with — you have to stay informed. That means reading a lot and keeping up with the latest guidelines, regulations, and industry standards. There's no magic formula — just keeping your finger on the pulse!

Lastly, what advice would you give to GCs who are trying to balance short-term commercial pressures with longer-term ESG goals?

My advice is to stop thinking of it as a trade-off between ESG and commercial issues. Every business faces decisions where short-term benefits might not align with long-term goals, but the key is to see how ESG fits into both. If your ESG initiatives have clear links to business benefits — whether that's reducing costs, mitigating risks, or boosting your brand — they should naturally be part of the overall decision-making process. It shouldn't be an "ESG vs commercial" debate. The two can and "should align".

Steven Webb, ESG consultant & former GC

How can your law firm help to integrate ESG into your business effectively?

Starting with 'E'

Environmental, social, and governance (ESG) has risen up the corporate agenda and is now at the heart of every responsible business's activities — whatever the sector. It isn't just one topic, however, and encompasses a vast array of issues. In this article, we look at the much talked about 'E' of ESG, given the attention on the climate and net zero.


Ben Sheppard

The role of the GC in relation to ESG

Boards increasingly see ESG as a legal issue within the GC's remit. For this reason, as a GC, in addition to advising on risk and compliance, you can deliver value to your organisation through playing a leadership role on ESG. Yet even when you're doing the right thing and undertaking ESG activities as seriously as they should be undertaken, there are still a number of pitfalls to be avoided.

Greenwashing: the clamp down has begun

By now almost everyone in the corporate world is familiar with the concept of 'greenwashing'. While it usually implies a conscious decision to deceive, accidentally misrepresenting your ESG credentials can also result in charges of greenwashing. But intentional or not, the end result of greenwashing can severely damage your business.

Here in the UK, the Competition and Markets Authority, Advertising Standards Authority, and Financial Conduct Authority are all increasingly focused on enforcement activities relating to greenwashing. Even inadvertently making misleading claims — such as those by Hyundai with their Nexo model car — can lead to prosecutions and significant fines, and enforcement powers are expected to be become only more robust in the future. Under the Digital Markets, Competition and Consumer Bill, which is currently being debated in Parliament, large companies could even face the threat of civil penalties of up to 10% of global turnover for breaches of consumer law.

"Large companies could even face the threat of civil penalties of up to 10% of global turnover for breaches of consumer law."

The UK isn't alone. In the EU, a new directive has been proposed to address inaccurate green claims, with the aim being to protect both consumers and the environment alike.

Taking hold of your ESG story

No matter how good your intentions, it's vital you don't muddy the waters around your organisation's ESG efforts. This means integrating ESG into your business in a truly holistic way — through policies, procedures, and culture. It means telling the complete story when communicating your ESG credentials to stakeholders. And it also means getting the right support, which is precisely where your law firm can share its expertise and provide added value.

There are, of course, the standard ESG-related offerings that law firms can provide, such as gap analyses, drafting policies and procedures, strategic support, and keeping you abreast of changes in legislation. But there's also much more they can support you with as you embed ESG in the organisation. Below we've zeroed in on 3 specific activities where your external legal team can help to ensure your ESG efforts are optimised, rather than leaving you open to criticism or worse.

Contracting your way to net zero

You may already be familiar with the work of the Chancery Lane Project, a global network of lawyers and business leaders who have been working to find ways to help businesses support their net zero goals through the use of 'climate clauses' aimed at decarbonising their contracts.

To date they've drafted over 100 climate clauses and more than 70 glossary terms — together with creating a suite of tools, with more in the pipeline. While there can be no doubt that it's a very innovative project with a lot to gain both for business and the world at large, the trick is in understanding when and how these clauses should be used. Simply inserting a climate clause into supplier or other contracts won't necessarily deliver the result you need — a climate objective allied with a commercial or operational outcome. In some instances, it might even preclude an organisation from being able to work with you. Take, for example, a small business that simply doesn't have the resources to comply with the clause, or perhaps the cost of compliance is prohibitive. This is where your legal adviser can help you to apply the right climate clauses in the right contracts, helping you to deliver climate objectives in sync with the company's aim of being a responsible, sustainable business.

Carbon offsetting — as simple as it seems?

You've probably already been targeted with beautifully photographed marketing campaigns by companies that promise to help you offset your organisation's carbon emissions through the planting of trees, building of renewable energy projects or supplying clean cooking stoves to villages in developing countries, among other things. However, how credible are they?

Planting a forest, for example, may be a great start, but how has its future carbon offsetting potential been accurately calculated and verified? What assurances have been provided that it will be responsibly managed over its full lifecycle to remove the promised levels of carbon dioxide from the atmosphere? What sounds like a simple fix to get you to net zero may not always be what it seems. What's more, such schemes are increasingly scrutinised on wider sustainability grounds: Does it adhere to sustainable forestry standards? Has the impact on biodiversity, soil health, and agriculture been factored in? Your law firm can help you conduct due diligence and help ensure carbon offset contracts are robust, reliable and effective.

Harnessing the power of PPAs?

An increasingly popular way to make your energy usage more sustainable is to buy 'green' energy. Your business may switch to a renewable electricity tariff, purchasing electricity wholly, mainly, or partly generated by renewable sources such as solar and wind. Larger businesses with high energy consumption such as manufacturers and data centres may consider a longer-term commitment in the form of a power purchase agreement (PPA) giving a lower-cost source of green electricity.

A PPA is as a contract typically between the power consumer (the buyer) and a renewable energy generator, where the buyer agrees to purchase a certain amount of renewable electricity at a certain price for a specified period of time. The main types of PPA are a 'private wire' PPA, in which the renewable power is supplied directly from a nearby generator, and a 'corporate' PPA in which the power is 'sleeved' to the purchaser by its licensed supplier via the grid. Each model enables an organisation to hedge against future energy price volatility while greening their business. A private wire PPA can additionally offer lower prices through avoiding grid 'use of system' charges.

This approach is not, however, without risk. PPAs often require long-term commitment from the purchaser — usually at least 10 or 15 years — and contracts can be complicated as they address risks associated with the generation technology, infrastructure, and potential future changes in regulation and law.

Most businesses today are either considering procuring renewable energy, or have already done so, as part of the 'E' in their ESG strategy. Given the inherent complications involved, it's advisable to consult specialist lawyers who can help them navigate the options and select the model that best suits their needs, aims and risk appetite.

Delivering on your goals

ESG is constantly evolving and is highly unlikely to drop off the corporate agenda or be removed from the GC's remit. As businesses devote ever more attention to being responsible and burnish their ESG credentials, the GC will continue to play the role of protector, educator, strategic thinker, and leader. By working with law firms who understand the wider scope of ESG and the myriad specialisms it encompasses, GCs can help their organisations focus their ESG efforts intelligently — tackling the challenges and seizing the opportunities that climate, net zero and the 'E' in ESG present.

Ben Sheppard, Partner and Head of Infrastructure & Energy at Walker Morris.

In conversation with:

Kunaal James Wharfe, Leeds Bradford Airport

With sustainability and ethical impact an increasing priority for businesses of all shapes and sizes, ESG initiatives are more visible than ever before and the responsibility for leading this important work often falls to GCs. In this interview we talk to Kunaal Wharfe, General Counsel and Company Secretary at Leeds Bradford Airport, to get his take on why this is and how he believes the role of GC can make the most impact.

Kunaal has worked at some of the biggest US and multinational tech and media companies in the world including, dentsu international, Hewlett Packard, and Apple.

Kunaal Wharfe

“Taking a tailored approach is imperative — a cookie cutter approach is a sure way for an ESG agenda to fail.”

Hi Kunaal, it’s good to see you. Thanks for taking the time to talk to us about ESG. Could you start by telling us why you believe General Counsel are best placed to lead on ESG initiatives?

For me it’s all about access and the breadth of the role of a GC. As a GC you get to interact with all parts of the business and this broad view of a company’s operations and interactions with different departments makes it possible to integrate ESG considerations into the overall business strategy. You gain the ability to understand the teams around you, and can then influence and develop tailored and achievable objectives and initiatives. GCs also naturally, by virtue of their role, have a strong moral compass and ability to act impartiality, which are hugely beneficial in developing an ESG agenda. And of course, as a GC your understanding of the legal and regulatory landscape has to be first rate, so navigating the often complex compliance requirements is a part of the process where you can really add value. Finally, the role of GC involves significant interaction with Board and senior management, which is a huge enabler when it comes to advocacy and driving ESG initiatives more effectively.

What’s your approach to ensuring that ESG is tackled in a strategic way? Where do you start?

First of all I like to gain a really clear understanding of what might have already been done — it’s incredibly helpful to know where you’re starting from. Listening and engaging with stakeholders, the local community, employees, business partners and customers is a large part of this, as is looking at the industry as a whole and seeing what other people are doing. But it’s also worth remembering to be realistic, and by that I mean considering the size, type and role of your business and ensuring your ESG efforts are proportionate to this. Taking a tailored approach is imperative — a cookie cutter approach is a sure way for an ESG agenda to fail. I can’t emphasise enough how worthwhile it is to take the time to understand what’s important to your specific business, area and community.

What do you think are the biggest barriers for a GC taking on an ESG role? How do you tackle these and are there any specific strategies you’ve found effective for gaining leadership buy-in for ESG initiatives?

Understanding what and how ESG applies to your organisation is, is a big one to be honest. That and businesses having a collective understanding of why it’s so important. Resource and budget do come into it to a certain extent, and if there’s no support or buy in (from top to bottom) within the organisation it can be really hard to make progress.

I don’t think there’s a magic bullet to help tackle these issues unfortunately, but training can help. I always recommend talking to people in person to help them understand the importance of ESG from the perspective of their own roles and relating it to their work and responsibilities. If you can get people to see the significance of the business they work in, its current impact, and its potential for more — then you start getting positive buy in and can really start to move the dial. In some cases, it can be beneficial to link ESG to business objectives, for example in private equity businesses or PLCs, because it’s often a key component of investor expectations. Also, providing examples of other similar or competitor businesses’ activities and objectives in this space can be motivating and offer the evidence that some people need to really get on board.

Are there any significant challenges you’ve faced in your ESG journey that would be valuable for other GCs to learn from? What approaches helped you navigate them?

Being slow off the mark — often because of other priorities (for example LBA’s historic lack of investment) can really hinder progress. Covid and the subsequent recovery period was of course a huge challenge, and the impact of previous management teams shouldn’t be overlooked either. Historically there’s been a focus on certain topics, e.g. Environmental — specifically carbon and noise, but it’s still important to create awareness of the Social and Governance parts of the ESG equation. Not considering the whole picture may cause issues further down the line.

As I touched on in the last question, navigating these kinds of challenges requires training, investment in time talking to people, and evidencing the importance of what you're trying to do and the impact it can have.

In an era where transparency is essential, what's your advice on communicating ESG efforts and progress to the public? How can GCs ensure they're being transparent without exposing their organisations to undue reputational risk?

In the first place you have to monitor and report — to individual teams, management, Board committees, and the general public. Having specific KPIs and targets ensures your reporting remains objective. Although obviously you'll need to give serious thought to your targets at the outset so that you're completely comfortable reporting on them! And if progress isn't sufficient, it's vital that you're honest and transparent about why — providing a clear outline of what you are going to do to rectify or remedy the situation.

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How do you measure the success of ESG initiatives, and what metrics would you advise other GCs to focus on to demonstrate impact?

You need specific KPIs that can be actively and routinely measured and reported on. After all, there's absolutely no point setting objectives and KPIs that can't be measured! That said, those KPIs do need to be kept to a number that's manageable — if you have too many it will be a much harder job to manage, track and report on them, and with a large number there's a tendency to lose impact. Make sure you keep them tailored and specific, ideally based on a strategy that's been developed from a materiality assessment — this way the impact is then directly relevant to your business' stakeholders.

What resources, training, or networking opportunities would you recommend to GCs looking to build their expertise and stay updated on ESG trends?

Reading would be top of my list – there's so much available and easy to access. The UN Sustainable Development Goals are good for linking to your strategy and KPIs, and law firms and many legal events have discussions and panels on ESG so it's worth keeping an eye out for those. Extra resource can be invaluable. I lobbied for a Head of Corporate Affairs & Sustainability to provide more knowledge and ownership, as well as an extra pair of hands. Perhaps most importantly, use your network and talk to other lawyers! Don't hesitate to reach out to other GCs and in-house lawyers who are always very helpful and a fantastic source of ideas, direction, and reassurance.

Kunaal Wharfe, GC from Leeds Bradford Airport in conversation with Will Cousins, Partner in Real Estate at Walker Morris.

Will Cousins

Five in 5

In each edition of Illuminate, our team of experts shine a light on key priorities for GCs and in house teams.

1 The latest on AI

"We've seen a recent uptick in activity from the UK's financial regulators in relation to AI. The Financial Conduct Authority is seeking views until 31 January 2025 about current and future uses of AI in UK financial services. It's also hosting an AI Sprint on 29 and 30 January 2025, to help inform its regulatory approach to AI and how it can create the right environment for growth and innovation.

"The FCA and Bank of England also published the results of a recent survey of AI and machine learning in UK financial services. The aim is to build on existing work in this area and deepen the regulators' understanding.

"Meanwhile, the Information Commissioner's Office highlighted that AI is increasingly being used in the recruitment process to save time and money, helping to source potential candidates, summarise CVs, and score applicants. The regulator issued a series of recommendations to AI developers and providers on the use of AI tools in recruitment and shared key questions organisations should ask when procuring AI tools to help with their employee recruitment.

"In other news, the government published a research report analysing the UK's AI sector and providing key findings as to its size and scale.

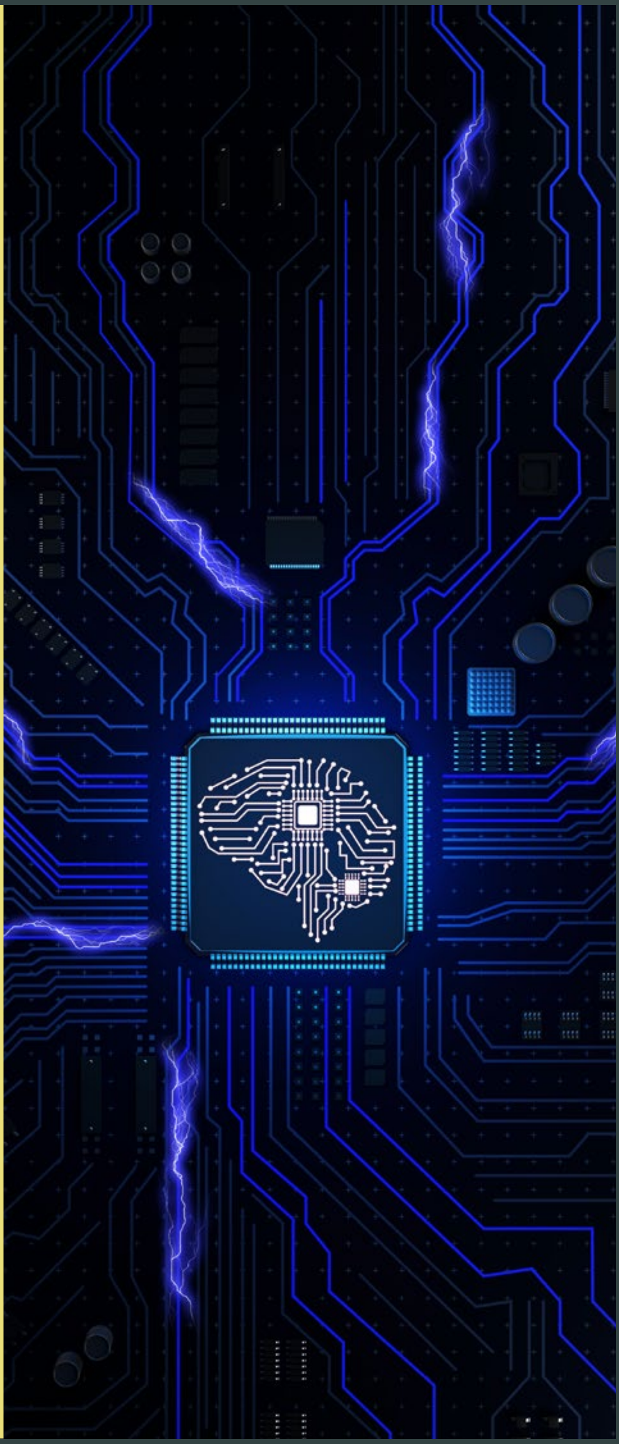
"Over in Europe, the European Commission's AI Office consulted on guidelines relating to prohibited AI practices and the definition of 'AI system' under the EU AI Act. The Commission recently published the first draft of a code of practice on general-purpose AI models. Over 100 companies have signed the EU AI Pact and its voluntary pledges, ahead of EU AI Act implementation.

"While individual countries and the EU are setting their own regulatory agendas in relation to AI, dialogue at a global level continues. The International Chamber of Commerce recently produced a narrative on business considerations for the trustworthy, responsible, and ethical development of AI, outlining the 4 pillars of global AI governance from the perspective of global business and citing real-life examples."

- Sally Mewies, Head of Technology & Digital

Who does this impact? Board and senior management, Risk, HR, IT, those responsible for data protection and information and cybersecurity.

When? Ongoing.



2 Failure to prevent fraud offence

"The government has now confirmed that the new corporate criminal offence of 'failure to prevent fraud' will come into force on 1 September 2025.

"The offence applies to large, incorporated bodies and partnerships across all sectors of the economy. 'Large' means meeting 2 or 3 out of the following criteria: more than 250 employees; more than £36 million turnover; and more than £18 million in total assets. These criteria apply to the whole organisation, including subsidiaries, regardless of where the organisation is headquartered or where its subsidiaries are located (although a UK nexus is required for the offence to apply).

"An organisation may be criminally liable where an employee, agent, subsidiary, or other 'associated person', commits a fraud intending to benefit the organisation and the organisation didn't have reasonable fraud prevention procedures in place. Crucially, it doesn't need to be shown that directors or senior managers ordered or knew about the fraud.

"Newly-published guidance provides advice to large organisations on the fraud prevention frameworks they can put in place. These should be informed by the following 6 principles: top level commitment, risk assessment, proportionate risk-based prevention procedures, due diligence, communication (including training), and monitoring and review.

"This new offence has wide application and it's essential that in-scope organisations familiarise themselves with the guidance. They'll need to develop and implement their fraud prevention procedures, including appropriate training for staff and others, in good time ahead of the 1 September 2025 deadline."

- Andrew Northage, Partner, Regulatory & Compliance

Who does this impact? Board and senior management, Risk, Finance, Sales, Procurement, IT, HR, those responsible for learning and development.
When? 1 September 2025.

3 Developments in employment law

"The wide-ranging Employment Rights Bill discussed in the previous edition was introduced to Parliament in October. While the Bill sets out significant preparatory steps to make radical changes to key elements of UK employment law, the majority of the reforms will be subject to further consultation and a lot of the detail will be left to future regulations. Some of that consultation has already started, such as on the proposed changes to statutory sick pay, but for the majority of the changes, there's significant uncertainty about when they'll come into force. It's likely that this could be as late as Q3 2026 for matters such as unfair dismissal becoming a day one right. The Bill still has a long way to go, and will no doubt be subject to considerable debate as it proceeds through the various stages before becoming law.

"This Bill will significantly impact what we currently think of as 'business as usual' HR decisions. Boards in particular should have an eye on the key changes for workforce planning over the next 2 years.

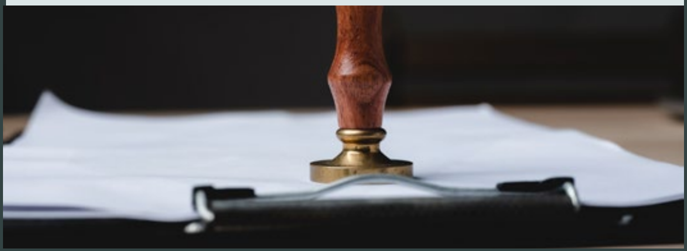
"In other news, the new duty to prevent sexual harassment came into force on 26 October 2024. It places an obligation on employers to take reasonable steps to prevent sexual harassment of their workers. Failure to comply could lead to increased compensation in the Employment Tribunal; Equality and Human Rights Commission (EHRC) action; and reputational damage and employee relations issues. The EHRC and Acas have both published updated guidance on this topic. We have a package of training solutions on offer to help employers meet these obligations.

"Notably, the Employment Rights Bill inserts 'all' back into this obligation to take reasonable steps to prevent sexual harassment (so that it becomes '**all** reasonable steps'). While this change won't apply until after the Bill becomes law, employers would be wise to take all reasonable steps now, to avoid having to make further changes in the future. Thorough risk assessments and employee surveys should assist with identifying what steps to take. It's also envisaged that future regulations will detail what's meant by reasonable steps.

"And finally, following some suggestions to the contrary in an earlier Employment Appeal Tribunal decision, we've also seen the Court of Appeal confirm that there's no requirement for employers to carry out general workforce consultation with all employees in relation to redundancies of less than 20 employees in non-unionised workforces."

- Lucy Gordon, Partner, Employment & Immigration

Who does this impact? Board and senior management, HR, Risk, Finance, Payroll, Learning & Development.
When? Timescales for the Employment Rights Bill are unclear at the moment — possibly Q3 2026. The new duty on employers to prevent sexual harassment came into force on 26 October 2024.



4 Climate reporting and sustainability

"Commercial and CSR/ESG drivers, as well as forthcoming, far-reaching requirements under the Corporate Sustainability Due Diligence Directive (CSDDD — mentioned in the previous edition) are moving climate transition planning strategy and reporting up the corporate agenda.

"The Transition Plan Taskforce (TPT), aimed at establishing a gold standard for private sector transition plans, has now published its final report and officially concluded its work. The International Financial Reporting Standards Foundation has assumed responsibility for the disclosure-specific materials developed by the TPT, and a new International Transition Plan Network will act as a global collaborative platform. Now that the TPT's final report has been published, we're waiting for the government to consult on sustainability reporting requirements for large public and private companies.

"In related news, the Taskforce on Nature-related Financial Disclosures (TNFD) is requesting feedback until 1 February 2025 on draft guidance for companies and financial institutions on developing and disclosing a nature transition plan. The TNFD has also signalled its support for the use of cross-reference tables in corporate reporting to help simplify and streamline the presentation of TNFD-aligned recommended disclosures in existing voluntary or mandatory corporate reporting. We've also seen the Climate Financial Risk Forum publish a Handbook for financial institutions on nature-related risk.

"Over in Europe, the Corporate Sustainability Reporting Directive (CSRD) will require in-scope corporate entities (including EU companies and non-EU companies with EU activity) to begin mandatory reporting on a range of ESG topics on a phased basis from 2025 to 2029. The European Commission President recently announced that a new 'omnibus' directive will streamline overlapping regulatory and reporting requirements within the CSRD, CSDDD and other EU 'Green Deal' legislation. Watch this space."

- Ben Sheppard, Partner and Head of Infrastructure & Energy

Who does this impact? Board and senior management, those responsible for climate-related issues. CSRD will impact UK companies with an EU listing or an EU subsidiary or branch (subject to certain financial threshold criteria). CSDDD will impact UK companies generating a net turnover exceeding €450 million within the EU.
When? UK sustainability reporting standards expected in 2025. CSRD to be phased in from 2025. CSDDD to be phased in from 2027.

5 Latest on data and cybersecurity

"Data reform is back on the agenda after a Data (Use and Access) Bill was introduced to Parliament. Proposed changes to data protection law include a new lawful ground for processing personal data, where processing is necessary for the purposes of a 'recognised legitimate interest'. Unlike its predecessor, this new Bill doesn't propose changes to the requirements for organisations to appoint a data protection officer and keep processing records. With a focus on wider data reform such as the introduction of smart data schemes, it doesn't represent a major overhaul of the current data protection regime.

"In other news, the Information Commissioner's Office launched a new audit framework designed to help organisations assess their own compliance with key requirements under data protection law. There's 9 toolkits covering topics including information and cybersecurity, and AI.

"In relation to cybersecurity, the government confirmed that the Cyber Security and Resilience Bill announced in the King's Speech will be introduced to Parliament in 2025. This comes as the government announced that UK data centres will be given 'Critical National Infrastructure' status, opening up greater support in preventing and recovering from critical incidents such as cyberattacks. New rules to strengthen the operational resilience of the UK's financial sector came into effect on 1 January 2025. We've also seen the Association of British Insurers and Lloyd's of London publish guidance for (re)insurers on how to approach defining a major cyber event.

"Recent resources from the National Cyber Security Centre include guidance to help Chief Information Security Officers communicate with boards to improve oversight of cyber risk, and guidance to help organisations manage their communications strategy before, during, and after a cybersecurity incident. There's also an updated briefing pack as part of the Cyber Security Toolkit for Boards, including insights from the high-profile ransomware attack on the British Library.

"Over in Europe, the Council of the EU adopted the Cyber Resilience Act to boost the security of digital products – the equivalent of the UK's product security regime which came into effect on 29 April 2024. The bulk of the provisions will apply from 11 December 2027."

- Nick Stubbs, Partner, Commercial

Who does this impact? CEOs, Board and senior management, Risk, IT, those responsible for data protection and information and cybersecurity.
When? It's not yet known when the Data (Use and Access) Bill and the upcoming Cyber Security and Resilience Bill will become law — likely at some point in 2025. Operational resilience rules for the financial sector came into effect on 1 January 2025.

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