



Do lawyers belong in the boardroom AS NON-EXECUTIVE DIRECTORS?

CONTENTS

For the motion

Against the motion

What boards are looking for

Conclusion

Spencer Stuart Board Intrinsic

Our UK Legal Search Practice

In May 2013, Spencer Stuart hosted a debate with the motion “Lawyers belong in the boardroom — as non-executive directors”. Six leading figures from business, academia, politics and the legal profession argued the case for and against lawyers having a role in the boardroom as directors, rather than limiting them to an advisory role.

As the work of boards becomes more complex and diversity continues to be a priority, questions are being raised as to why so few lawyers have been appointed to non-executive roles in UK listed companies in recent years: only 10 FTSE 100 companies have a lawyer on the board.

In two highly successful economies, Germany and the US, the picture is quite different. Over 50 per cent of DAX 30 and Fortune 100 companies have at least one qualified lawyer on their unitary or supervisory boards. Even allowing for the fact that it is commonplace in the US for many people to attend law school before pursuing a mainstream business career without any intention of formally practising law, the gulf is significant.

The current reluctance to consider lawyers for non-executive directorships in the UK dates back to the 80s. Prior to that, City lawyers were commonly to be found on boards alongside merchant bankers. As boards professionalized and concerns over conflict of interest began to be aired, lawyers all but disappeared off boards. The purpose of this debate was to consider whether the legal profession should once again be viewed as a legitimate hunting ground for non-executives, at least after law firm partners have retired from their partnerships, and what the potential benefits and drawbacks of this might be.

FOR THE MOTION

Lawyers possess a range of skills and intellectual qualities that complement those of existing directors.

Lawyers are comfortable dealing with complexity and bring an important perspective to the grey area between morality and the law.

Lawyers in professional practice have plenty of exposure to clients' business challenges and belong to sizeable commercial enterprises of their own.

Lawyers contribute diversity and insight to boardroom debate and decision making.

DIVERSITY AND INSIGHT

- > Diversity of thought and background are as valuable to boards as gender or ethnicity. Boards should not be limited to people with business and finance experience.
- > Lawyers are well placed to help make well-informed decisions and judgments on a range of matters faced by boards, from regulatory, legal and societal obligations to consumer needs and benefits.
- > Lawyers possess a challenging and forensic mindset that is needed now more than ever.

“ If you want to choose a category of non-executive director most likely to be the grain of sand that produces the pearl in a decision oyster — then the lawyer has a strong claim.

COMPLEXITY

- > Board directors have to navigate an increasing wave of regulation and administrative complexity.
- > Lawyers are trained to absorb large amounts of material and assimilate detail quickly.
- > They are committed to accuracy and fact-based decision making.
- > It is reassuring for directors to have among their number a non-executive familiar with the pitfalls of a complex regulatory landscape.
- > Boards should not rely on buying in legal services on a 'needs must' basis. They may not always realise when the need for a legal perspective is most pressing.

MORALITY AND THE LAW

- > We are no longer in a binary world of right and wrong where it is enough just to operate within the law. This poses a new challenge for boards.
- > Lawyers are well placed to help boards navigate the grey areas which can result in consumer revolt and reputational damage. For example:
 - The lines between tax avoidance and tax evasion are blurring. Things that are not legally correct are seen as morally wrong.
 - Boards have to balance the short-term interests of shareholders with the long-term interests of employees.
- > Lawyers are committed to high standards of probity and moral worth; they are monitored and regulated by their professional body.

BUSINESS-MINDED

- > The UK's legal industry is thriving and recognised internationally for its excellence. It has truly global reach and it contributes £3.7bn to the UK export economy. Lawyers know how to run successful commercial operations.
- > Lawyers have built one of the UK's most successful export businesses. They can help build other industries and should be represented on boards.
- > In the course of their work, corporate lawyers encounter countless companies operating internationally on a large scale and in the midst of complexity.
- > Law is the only major business-savvy profession not represented on boards.

AGAINST THE MOTION

There are many reasons why lawyers do not belong in the boardroom, but in truth, no one “belongs” there by right — there is no place for arrogance in the boardroom.

The legal view is always available through the general counsel, the company secretary and other advisors.

There is simply no room for lawyers given the diverse breadth of skills and experience required of non-executives.

Lawyers lack commercial acumen and do not have the right training or skill-set to succeed in the boardroom.

NO ROOM

- > For the majority of boards, non-executive candidates who are expert in, and have broad experience of, business and finance are preferable.
- > We should be prioritising people in business and finance roles as future non-executives, not lawyers. There are plenty of the former.
- > Highly educated people choose to go into business, and their education is furthered by MBAs and refresher courses. Non-executives should continue to be drawn from this pool.
- > Boards have become professionalised and every seat counts; gone are the days of the self-proclaimed “gifted amateur”.

NO NEED

- > The company secretary attends meetings and advises the board on governance and regulatory compliance expertise.
- > A good general counsel will also be fully engaged with the business.
- > The board can readily acquire high-quality legal advice from outside counsel.

SKILL-SET IS WRONG

- > Lawyers are too specialised and too focused on the minutiae.
- > They do not have the experience to challenge top business professionals.
- > They are happier advising rather than taking decisions.
- > It is not in their DNA to make bold decisions without perfect information.

“ Lawyers’ decision-making qualities are dulled out of existence. Lawyers are not taught to take a view.

- > An effective non-executive needs to contribute to building consensus through subtle means and to challenge in a non-confrontational way. This may involve some “fuzzy edges” with which lawyers are not naturally comfortable.

COMMERCIAL ACUMEN

“ The lawyer buys a bottle of lemonade. It has a snail inside. The lawyer’s first thought is: ‘is the manufacturer liable?’ and not ‘what has gone wrong with the supply chain?’

- > Too many lawyers “don’t do numbers”. Without a strong grounding in finance, commerce or operations, lawyers will be uncomfortable debating and deciding on commercial matters.

WHAT BOARDS ARE LOOKING FOR

The qualities sought in a potential non-executive director are many and varied. At Spencer Stuart, we have distilled these down to five core, intrinsic qualities which all board members must possess if they are to be effective in their roles. For more details on this, see the section on Board Intrinsic on page 6.

Lawyers seeking to join a board should also consider whether they have the following characteristics in particular:

- > The capacity to contribute to strategy and to address current and future opportunities and threats;
- > The courage and sensitivity to challenge management when appropriate and to deploy charm in order to do so in a constructive and convincing manner;
- > The ability to deal with complex scenarios, yet make decisions based on incomplete information;
- > Clarity of thought, good judgment, relevant experience, an easy manner and the personal qualities and experience that are both additive and complementary to the existing board of directors.

Lawyers can possess these traits and more. They can build on their existing knowledge and skills by taking courses at business schools but, as with the non-executive role itself, this involves a serious time commitment.

Lawyers who want to become non-executive directors should downplay their identity as lawyers and help chairmen look beyond the label. You need to emphasise your skills and experience in business and management. If your defining characteristic is that you are a lawyer, that is not enough. Indeed, it can be a disadvantage.

There are three things that an aspiring non-executive needs to do if he or she is a senior lawyer:

- a. Skill up
- b. Have realistic expectations about what kind of board to join
- c. De-emphasise the lawyer badge

CONCLUSION

There is some common ground between the arguments for and against lawyers sitting on boards. Lawyers can make excellent non-executive directors, but they do not belong there by right or indeed solely by dint of a long and successful professional legal career.

As a constituency, lawyers possess many of the core skills expected of an effective non-executive, including judgment, integrity, independence and an ability to assimilate key information. However, these skills alone may well not be enough to persuade chairmen to add them to their boards. In addition, they must have a thorough and proven understanding of business, an ability to contribute at a strategic level, and a better facility with numbers than most have at present.

In short, lawyers probably need to skill up to become compelling candidates. This may be an easier transition for general counsel who have been close to the board and the strategic decisions of a business over a number of years. Many of the necessary skills will have rubbed off on them and they may well be seasoned boardroom operators. However, experienced partners from a major law firm have the advantage of having worked with a broad range of companies and sectors over their careers. The variety of corporate challenges they have witnessed will most likely outnumber what is possible within a single company. Nevertheless, for lawyers to assume that that they are naturals in the boardroom because they have advised boards may work against them rather than for them.

Lawyers with a broad skill-set should not be discounted as potential non-executive directors. There is room for lawyers in this role, but only those lawyers who have all the skills that the board is looking for. The fact that they are lawyers becomes less relevant than the qualities they can bring to the boardroom as the businessmen and women they have become.

SPENCER STUART BOARD INTRINSICS

Spencer Stuart developed its Board Intrinsic[™] assessment approach as a response to the call for greater diversity on boards. Board Intrinsic broadens the pool of potential non-executive director candidates by focusing on intrinsic, underlying talents and competencies, assessing potential non-executive directors against five key attributes: Intellectual Approach, Independent-Mindedness, Integrity, Interpersonal Skills and Inclination to Engage (Motivation). Those candidates who score well in all five areas are most likely to be capable of contributing as 'all-round' directors, in addition to the specific knowledge, skill or set of experiences that makes them of interest to boards.

Why are these qualities so important? Certain elements of the board director's role, such as understanding and applying corporate governance best practices, can be acquired through training and directed reading. Other aspects, such as developing a deep understanding of the company's strategy, require judgment and intellectual agility which are critical components of business leadership. These are less easy to learn. Board directors need to be comfortable dealing with complexity, able to bring analysis and logical reasoning to bear on a new, ambiguous or fast-changing situations in order to reach a sound decision. Prospective directors who can work with complexity in an unfamiliar environment are the ones most likely to learn and adapt to the challenges faced in the boardroom.

Naturally, assessing an individual's intrinsic qualities is only the starting point. The suitability of anyone to join a board depends on the unique circumstances of the business and its strategy, as well as the board culture and how well the directors will fit together as a group.

OUR UK LEGAL SEARCH PRACTICE

Spencer Stuart is a recognised market leader for legal search in the UK and across the world. Our team of four specialists in London have all practised law and bring unrivalled experience and a sophisticated understanding of senior legal roles to a wide range of public and private corporate clients, major law firms and nonprofit organisations.

We have long-standing and first-class candidate relationships, enabling us to identify and attract high-performing legal talent across the whole spectrum of sectors, including consumer, financial services, industrial, life sciences, technology, media, telecoms and nonprofit.

We have a preeminent track record in leading FTSE general counsel searches and also handle assignments for deputy and assistant general counsel, company secretaries and other senior roles including heads of compliance and intellectual property.

As part of a global firm serving multinational clients on every continent, our UK practice has access to a truly international pool of legal talent, working alongside specialist colleagues in Europe, North America and Asia Pacific to find the best fit for our clients' legal talent needs.

AREAS OF FUNCTIONAL EXPERTISE:

- > General counsel
- > Company secretary
- > Compliance
- > Financial crime
- > Regulatory & government affairs
- > Intellectual property
- > Competition
- > Litigation
- > Securities and M&A

About Spencer Stuart

Spencer Stuart is one of the world's leading executive search consulting firms. Privately held since 1956, Spencer Stuart applies its extensive knowledge of industries, functions and talent to advise select clients — ranging from major multinationals to emerging companies to nonprofit organisations — and address their leadership requirements. Through 54 offices in 29 countries and a broad range of practice groups, Spencer Stuart consultants focus on senior-level executive search, board director appointments, succession planning and in-depth senior executive management assessments. For more information on Spencer Stuart, please visit www.spencerstuart.com.

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