

“Ultimately, you will need to know your subject and regulatory environment inside out”

Governance and Compliance talks to Christopher Hitchens, employment partner at Katten Muchin Rosenman LLP about his entry into the profession and how board diversity can address ESG issues

INTERVIEW BY SONIA SHARMA, EDITOR OF *GOVERNANCE AND COMPLIANCE*

Can you tell us about your background and your entry into the role?

I went to school in Birmingham, and moved to London in 1997 to train as a lawyer at Slaughter and May. I qualified as a Corporate lawyer, but changed my specialism to Employment law a few years later during my time at Latham & Watkins. I made Partner at Morgan Lewis in 2008 and became the head of the Employment group in London in 2009. Subsequent to that I had a very enjoyable four years at Lewis Silkin and finally I joined Katten in September 2015, and became the Managing Partner of Katten's London office on 1 January this year. Office culture has played an important role in my career to date, and I have first-hand experience of the detrimental health effects a poor culture can have. Culture shapes how I advise my clients, how I conduct myself as a manager and informs my aim to create a positive, supportive, inclusive, safe and fun office environment that is beneficial to all our employees.

What does your job involve on a day-to-day basis?

In my client advisory role, I advise clients on the many employment law issues they might encounter in their workplace on a day-to-day basis, such as (currently) the legality of vaccination policies, return to the office plans, the implementation of hybrid working schemes, as well as drafting contracts, bonus plans and policies, managing disciplinaries and grievances, running the defence to litigation claims etc. The key for me as an employment lawyer is to ensure that the advice is tailored to the client's particular workplace environment, to enhance its status as an employer through the HR solutions that it implements. In my role I am responsible for our office's financial performance, growth, standing in the market and all round recognition as a great place to work.



Diversity within organisations has been under the spotlight for many years. What are some of the key steps that you believe need to be taken?

As a straight, white, married man and a father of three daughters, I have tried to educate myself as much as possible around issues such as white privilege, the constraints on women reaching leadership positions, the current debate around transgender rights in the workplace etc. There are lots of views out there but some very common and powerful themes. I think we need to remember that to start with, a 'diverse' person aspiring to have a career in law might believe it will never happen for them, so embedded have the societal barriers been. Firms therefore need to be convincing in their promotion of messages of inclusivity to the broadest pool of people possible.

There then needs to be the psychological safety in the firm for all individuals to feel confident that not only do they have a voice, but that voice will enable them to make meaningful contributions. At Katten, our current spotlight focuses more on inclusion than diversity; whilst diversity targets are valuable in going some way to moving the dial, we believe that uniting everyone ensures we're taking an intersectional approach and not working on anything in isolation. When everyone feels they belong at a firm, retention and recruitment of diverse individuals is easier. There are a number of steps firms can take to promote inclusion, and they are all related to communication and allowing individual voices to be heard. One example is flexible working; as we start to embrace the hybrid working model, at Katten we've been in regular conversation with our staff about how they view their working arrangements in the short, medium and long term so we can come up with a solution that works for everyone. Another example is our recent training of 14 mental health first aiders from across the office so we are better able to spot the signs of those who might be struggling, and signpost them to further help where needed. Alongside our Employee Assistance Programme (EAP) and our annual Wellbeing Programme, we want to ensure that people feel supported at work, and that we provide a safe, non-judgemental working environment so that everyone can thrive.

How can board diversity address ESG issues? What are some of the solutions and how can they be implemented in organisations?

With a number of ESG-related legislative developments now underway around the globe, accountability for any weaknesses in an organisation's ESG practices is set to increase immeasurably. If organisations, led by senior management and boards, are expected to confirm that ESG risks are appropriately overseen and mitigated, lack of diversity in the board directly goes against the considerations that form the 'social' part of ESG. We need to bear in mind that as trusted legal advisers, if we are to assist clients in addressing increasingly critical environmental, social and governance challenges, we need a diverse leadership team ourselves to steer clients in the right direction when it comes to identifying and addressing any ESG-related gaps; we need different voices, perspectives and knowledge because, put simply, great minds do not think alike. If a board is not diverse, this should be addressed as quickly as possible. Senior leadership should: 1) look at the risks facing the organisation today and in the future, 2) draw out the expertise required of board members to address said risks, and 3) assess the composition of the board as it currently stands to identify any gaps to then be able to recruit diverse candidates who would fill that gap in board composition.

What would you consider the main governance challenges currently are for the sector?

There have been a number of recently required amendments to our processes around 'know your client' checks, anti-money laundering provisions and DAC-6 (the EU Directive on cross-border tax arrangements), which have necessitated some fairly major changes to our client due diligence and file opening procedures. We constantly need to adapt to new, or changes to existing, regulatory regimes including The Money Laundering and Terrorist Financing (Amendment) (EU Exit) Regulations 2020. The draft guidance for this from The Legal Sector Affinity Group is still pending approval from HM Treasury. Brexit has also been a challenge from a governance perspective, for example tracking the progress of UK legislation introduced as part of the legislative project associated with the UK's withdrawal from the EU. As we make plans to return to the office, like other businesses we need to ensure that we make the required investment to comply with the Health & Safety Executive's guidelines on working in a Covid-secure manner. In addition, we will see changes to our policies and procedures on flexible working, to accommodate a new 'hybrid working' model, and will need to maintain and adapt an effective framework to mitigate risks as flexible and agile working arrangements progress. Finally, the Professional Indemnity (PI) insurance market is hardening in the legal profession. A number of insurers have exited the market over the last few years, and we are seeing increases in premiums by 30% per annum on average.

Office culture has played an important role in my career to date.

What advice would you give to those beginning their governance career?

First, learn the rules, and go back to the original laws, or regulations, or guidance, and do not rely on a short-hand or summary view of these. Understand your regulator, and how it applies those rules. Ultimately, you will need to know your subject and regulatory environment inside out – black letter learning, allied with experience. Secondly, once you know the rules, read around the subject, and spot trends, potential developments, find out what others think and how they interpret them. Thirdly, you will make mistakes, but do not take a flier and make decisions that you are not authorised for. Respect the chain of command, and quickly train your antennae to recognise a potential problem, flag it to someone more senior and ask for their opinion. Finally, do not become a 'yes' or 'no' person; organisations need solutions, so learn your office's culture, tolerance for risk and the regulatory environment in which it operates, and the sanctions for non-compliance, and apply your knowledge of the relevant compliance regulations in that context. n