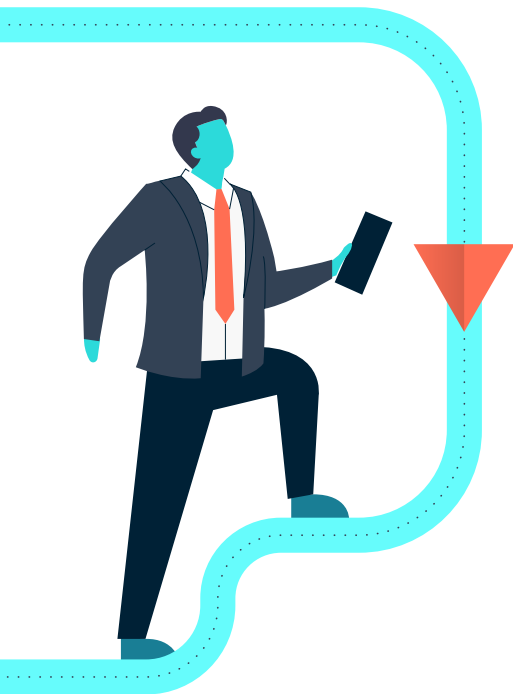


## ARTICLE

# The growing role of the general counsel in leading sustainability

The role of general counsel is expanding, including through opportunities for leadership in sustainability. What do CEOs need to consider about this aspect of the GC role?





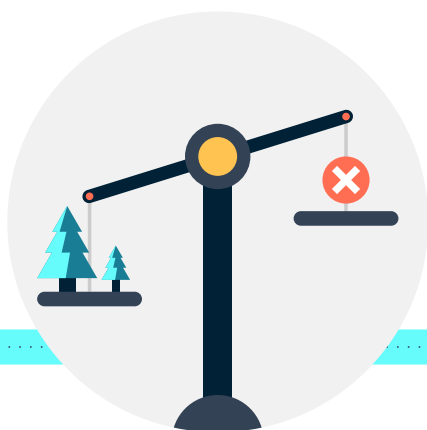
Over the past decade, sustainability has evolved from an emergent trend largely handled by marketing, PR, or compliance teams into a central driver of corporate strategy. Many companies have committed to pursuing sustainable practices, including greatly reducing carbon emissions—even striving toward net-zero in some cases—as well as committing to goals in other, wide-ranging topics including waste, well-being, and responsible sourcing. Meanwhile, governments and regulators worldwide are quickly enacting laws and regulations that will require companies to pay much more attention to sustainability—or face legal consequences. At the same time, companies have seen significant increasing pressure from shareholders and much more interest from employees, customers, suppliers and other stakeholders to define and report against clear environmental, social, and governance (ESG) metrics.

The combination of sustainability commitments and legislation has led to even more public scrutiny of corporate behavior in this area, and those developments have considerably raised the profile, responsibilities, and contribution of the general counsel in addressing sustainability broadly.

In our work, we have seen some companies make the general counsel (GC) responsible for shaping corporate sustainability principles, encouraging their legal teams to drive those principles in the function and in the wider business. In fact, in some cases, the GC's title has evolved into chief legal officer to better reflect these expanded responsibilities that now include integrating ESG risks and opportunities into strategy, organization, company-wide policies, and marketing holistically.

In this context, we spoke with three current and former GCs of FTSE 100 companies to understand how their sustainability journeys and responsibilities have unfolded. One theme is clear: whether recruiting a general counsel or considering how best to pursue their sustainability agendas, CEOs and boards must reflect on what responsibility they want to invest in a general counsel on this business-critical topic.

## The general counsel has an increasingly established place in driving sustainability leadership



“Now is the golden time, the golden opportunity for lawyers to really start getting involved with an agenda that is easy for the rest of the business to grasp, as legal has a clear role,” said Ritva Sotamaa, former chief legal officer at Unilever.

Lawyers may get involved in leading the sustainability function either by becoming the sustainability leader or driving sustainability through the legal function. As many GCs also have the role of company secretary, they will have already been exposed to the board conversations on sustainability and have direct responsibility for many topics that fall under the governance umbrella. A recent survey found that 47% of in-house counsel said they personally lead a material portion of ESG initiatives in their organization, and 90% said their departments lead a material portion of ESG initiatives.<sup>1</sup>

“Sustainability is a topic that is increasingly important and strategic,” explained Unilever’s Sotamaa. “If you think it’s somebody else’s job, you’re actually diluting the strategic positioning that you have in the company. The world changes all the time and your legal department needs to drive that change.”

<sup>1</sup> Mary Smith Judd, “GCs and ESG,” Corporate Counsel and Morrison Foerster, August 2022, boardmember.com.

## The role of general counsel in sustainability evolves differently in every organization

What is clear is that there is no “one size fits all” approach to sustainability leadership. In many organizations, sustainability started as a passion project driven by a small number of individuals who worked tirelessly to build awareness and engagement, secure leadership buy-in, and built up from there. Chris Vaughan, the previous general counsel and company secretary at Whitbread plc, saw this first-hand.<sup>1</sup>

Vaughan saw an opportunity to bring together small and siloed sustainability initiatives to gain a competitive advantage for a hospitality business. He began with a materiality assessment so he could understand how sustainability could add value to the organization. Over time, the business was able to align its sustainability efforts and add to its value chain.

Sotamaa joined Unilever at a point when the company already had a fully formed sustainability strategy and the executive team shared the responsibility. She was able to focus initially on the legal strategy behind the company’s approach to societal issues and understand how the Unilever strategy applied to the legal function particularly at a time when soft law still prevailed.

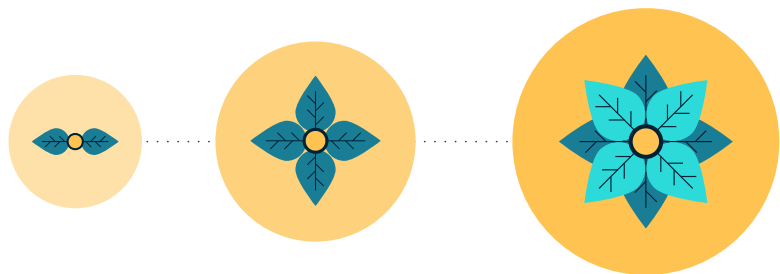
The role of GC is also becoming increasingly important as we see more lawsuits being brought against companies, lawsuits meant to hold them accountable for their sustainability practices. Greenwashing (when a company purports to have a sustainable mission, practice, or product for marketing purposes but does not make any significant effort to implement these sustainability credentials) is a common target for legal crosshairs. For example, the Securities and Exchange Commission (SEC), the United States’ security regulator, is charging one financial services company with misstatements and omissions about its ESG quality review of certain mutual funds. This type of litigation is the result of an increasing number of regulatory demands for sustainability disclosure.

“The standard we set for ourselves ended up being mirrored in the law that’s now coming forward. I’m not necessarily saying legal has been at the forefront of sustainability, but legal will be more important going forward with new legislation,” said Paul Lister, who serves as the director of legal services and company secretary at Associated British Foods plc (ABF). There is also consumer pressure against companies greenwashing, and lawyers are integral to overturning the results of the claims approval process.

New legislation doesn’t look the same everywhere, however, which only increases the complexity for multinationals and requires more legal input in interpreting laws and regulations as well as horizon scanning in order to stay ahead of the pack. As Sotamaa explained, “General counsel should really make sure that they have sight not only of the level of regulation or attention on today’s issues but also are considering what issues could be important tomorrow.”

The United States and Europe seem to be set on diverging when it comes to what information companies should be mandated to disclose, which has the potential to set the stage for battle in the courts, lobbying, and drive decisions about where companies will list.<sup>2</sup> Last November, the European Council formally adopted the Corporate Sustainability Reporting Directive (CSRD), which requires almost 50,000 companies (including foreign entities operating in the bloc) to regularly report on how sustainability impacts the company as well as how the company impacts people and the environment. In addition, the European Council adopted the European Supply Chain Act in December 2022, which is aimed at ensuring compliance with human rights and environmental protections. Meanwhile, when the SEC proposed new disclosure rules that would require large companies to disclose climate-related risks and greenhouse gas emissions, they received pushback from lawmakers and corporates that ultimately delayed the finalization and implementation process.

Given these domestic and international complexities around sustainability governance, boards and the C-suite will be looking to their GC for independent, balanced, and informed judgment. The GC of today is expected to be proactive, engaged, and have a broader perspective.



<sup>1</sup> David Burd, “The changing leadership style of today’s general counsel,” Heidrick & Struggles, [heidrick.com](https://heidrick.com).

<sup>2</sup> Henry Tricks, “Europe and America disagree over how to handle ESG,” *The Economist*, November 18, 2022, [economist.com](https://economist.com).

## Leadership and soft skills are the bedrock of sustainability leadership

“There was a clear question around the role of legal. I, personally, saw an opportunity to become more deeply involved in human rights, simply because of the implications of Unilever’s vast agricultural supply chain, the people in that supply chain, [operating it] mostly in tough emerging markets environments,” Sotamaa said.

Sometimes an organizational shift toward sustainability organically emerges. In Lister’s case, he was serving as GC for ABF (the parent company of Primark) with responsibility for health and safety. The CEO asked him to undertake audits of Primark’s supply chain. This was nearly two decades ago, and those audits soon snowballed into a full sustainability leadership role.

“In the last few years, we’ve undertaken three-and-a-half thousand audits of the Primark supply chain. We have a code of conduct against which we audit factories, and we review workers’ rights and conditions. We’re responsible for nearly a million workers in our tier-one supply chain: we expect them to ... have access to potable water, good working conditions, fair reward, freedom of access, freedom of movement, and have the ability to freely choose their employment.” Lister is also responsible for ABF’s overall ESG agenda, to which he reports to George Weston, the CEO, and to the board.

To lead sustainability, GCs require a range of soft skills to accompany their legal and business expertise. A previous Heidrick & Struggles study suggests that lawyers are increasingly being asked to determine not only what is legal but what is right on the full range of topics companies confront, as corporate reputation is frequently being measured against the good or harm companies do in communities and the way they treat their employees, suppliers, and partners.<sup>3</sup> That requires a strong moral compass and, in ABF’s Lister’s view, should drive your sustainability agenda: “With rigor and integrity, you’re not actually going for ratings, you’re aiming to do the best thing that you can do at that moment in time,” he said.

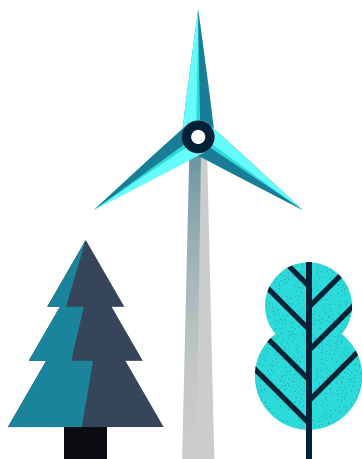
Should the general counsel lead the ESG agenda, they must also know how to lead a diverse group of both lawyers and non-lawyers who bring different skills, backgrounds, and expertise—and therefore cannot fall back on traditional models of leadership. This is important as the role of GCs continues to diversify and evolve into areas outside of its typical scope. Previous Heidrick & Struggles research also shows that, over the last seven years, there has been a shift in GC leadership style from authoritative to a more collaborative approach, with a strong shift toward empathy, team building, talent-spotting, and a coaching focus.<sup>4</sup> “You need a climate change expert, a water expert, development economists, and so on. These are not always easy to find in combination with a law degree. We have very diverse expertise and backgrounds in ESG. Leading a diverse team is different than just leading a team of lawyers,” added Lister.

Effectively communicating the organization’s goals in sustainability is crucial for securing stakeholder buy-in and is another skill that GCs require for effective leadership in sustainability. “For the commercially minded general counsel, leading sustainability is absolutely perfect. You’ve got to be able to communicate in a sensible, straightforward, commercial way by reporting against KPIs. It doesn’t come naturally to a lot of lawyers but, for the commercially minded, it seems to be a natural extension of being a general counsel and something that you can own, add value, and actually deliver on,” said Whitbread’s Vaughan.



<sup>3</sup> David Burd, “The changing leadership style of today’s general counsel,” Heidrick & Struggles, [heidrick.com](https://heidrick.com).  
<sup>4</sup> David Burd, “The changing leadership style of today’s general counsel,” Heidrick & Struggles, [heidrick.com](https://heidrick.com).

## Sustainability as a path to growth for GCs



Vaughan also pointed out that leading sustainability is evidence of being able to deliver on strategic goals “because it involves engaging and persuading a lot of different stakeholder groups, and the role requires good communication skills, people management, team management, program management—underrated skills that lawyers are pretty good at.” And again, because many GCs double as company secretary for their boards, their role as sustainability leaders mean they can ensure it is fully integrated into the board agenda.

Adding sustainability to the GC role increases their visibility within the organization and with board members. This opens up their opportunities to consider P&L roles and even CEO and non-executive board positions; often closed off to GC talent in the United Kingdom and Europe. “If you own something that is commercial, the [executive] team can see that you’re delivering something rather than just providing advice or asking questions. And I think it’s given me an opportunity for much greater visibility through the business,” Vaughan said.

We have also seen that the topic of sustainability has been a driver for more direct collaboration between GCs and chief human resource officers (CHROs). HR is a key touch point for sustainability particularly when looking at the “S” of ESG, and therefore it is critical for the GC to partner with the CHRO to better understand how the company can build, sustain, and communicate their efforts in areas such as diversity, social justice, sustainable operations, well-being, and giving back to the community. In addition, all that makes a meaningful difference to performance and retention.<sup>5</sup>

## Five considerations for general counsel who want to actively contribute to their ESG agenda

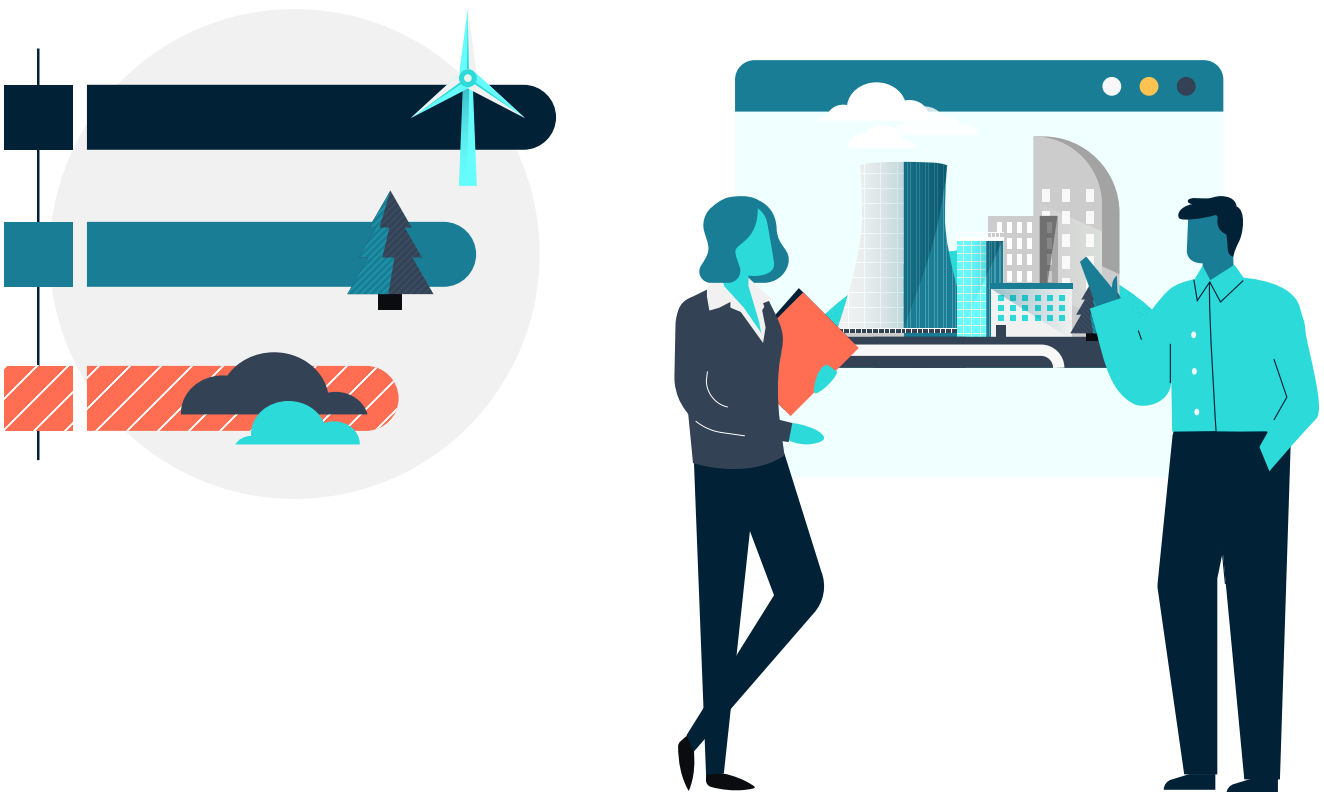


- 1 When leading on sustainability, make it business focused, simple, and commercial.** “Find a way to embed sustainability through the business to make a difference in what people are doing, so they can see a tangible improvement in their area of expertise, whether that’s operations or finance or HR or other areas,” said Whitbread’s Vaughan.
- 2 Frame sustainability in a positive way, about opportunity rather than risk and governance.** Sometimes the immediate instinct for a lawyer can be to make sustainability about governance and compliance, but people respond better to growth opportunities. “I think too many lawyers see risks and negatives and talk about governance, and I don’t think that always goes down that well. If you frame something as a business opportunity, alignment with strategy, creating value; I think you get people’s attention much more naturally,” explained Vaughan.
- 3 Tailor your sustainability approach to your organization.** Every organization will have a different approach to sustainability. Part of the responsibility of the GC is to help recognize how sustainability will impact an organization’s unique culture, business strategy, policies, marketing, and mission. Doing so will help GCs gain organizational buy-in as well as establishing a cohesive vision for sustainability in the organization. For ABF, the tailoring needed to be even more granular, as Lister explained: “It’s critical to tailor your approach to key businesses. It’s important that all the relevant issues percolate up for us to determine what is relevant for each unit and geography, and aggregate and deploy policies and programs as necessary. We’ve identified the material issues; we will then work hard in relation to those material issues and then we can spread the learnings in relation to them across the rest of our businesses in a way that caters to their needs.”

<sup>5</sup> Lisa Baird, Lee Hanson, Victoria Reese, “How chief human resource officer and general counsel collaboration creates a better employee experience,” Heidrick & Struggles, [heidrick.com](https://heidrick.com).

- 4 Doing the right thing today will prepare you for tomorrow.** Sustainability governance is changing rapidly. GCs will need to think ahead and prepare their companies for more stringent oversight and the clear shift from soft to hard law. Sotamaa explained, “I have seen many issues that, a decade or two ago, either seemed too small [and] slipped under the radar or were not directly a company’s responsibility [but have] become significant reputational issues today—take supply chain management, for example. It’s the role of the GC to think through how these potential implications could develop.”
- 5 Make it real for your stakeholders.** GCs can drive home the importance of sustainability by letting investors, customers, employees, and other stakeholders know what their company is doing. Lister said, “Over the last year, we’ve held three ESG days where we shone a spotlight on what we’ve done. Your customers and your employees need to know what you are doing in this space. We took the extra step with our board and took them to India to see the direct impact one of our key projects had on local life. That’s a very impactful instructional experience compared to just telling them how the new EU law affects supply chain.”

Historically, the role of the GC has been to think more broadly about the long-term impact of a transaction, dispute, or other corporate issue and provide counsel on law, ethics, public policy, corporate citizenship, and domestic and geopolitical risk. Now, with a growing number of disputes and hard laws shaping an increasingly complex sustainability landscape, GCs are positioned to become instrumental leaders in sustainability efforts in their organizations. GCs who have successfully made this transition will need to use more soft skills to lead diverse teams, implement sustainability initiatives while remaining focused on an organization’s unique culture and strategy, and balance the profitability of an organization with its responsibility to its stakeholders and the environment. CEOs and other C-suite executives can partner with general counsel to effectively integrate sustainability into the strategy, operations, and decision making for best-in-class sustainable companies.



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Former chief legal officer  
Unilever

**Chris Vaughan**

Former general counsel and company secretary  
Whitbread plc

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