

Culture Reviews and Investigations

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From the numerous investigations into crimes committed by serving police officers, accusations of bullying by those within the ministerial office and the various allegations levelled against high-profile TV presenters, there have been many spectacular falls from grace reported in the press in recent months.

The common thread in many of these situations has been a suggestion of a workplace culture that encouraged, or at least permitted, bullying and/or discrimination to run rife. In others, there has been claims of a culture of silence, which meant that while many people knew about the alleged misdeeds, they chose not to speak up. In almost all, there has been an accusation that senior management did not act quickly enough (or at all) to carry out a full and thorough investigation, leaving the court of public opinion to make its own swift and unforgiving judgments, on the basis of what its “jurors” pick up on social media and from pub gossip.

For those businesses that rely on investment, particularly those for whom environmental, social and governance (ESG) factors are a concern, being publicly hauled over the coals in this way is nothing short of a disaster. Even for those not reliant on investment, increasingly employees and consumers are voting with their feet when businesses are felt to get these things wrong, even if as a matter of fact or law they do not.

So, what should businesses be doing to be on the front foot?

Here are our top six tips.

1. Ownership and Accountability

A workplace will only have a healthy workplace culture if it is driven from senior management down. A key stakeholder (often a member of the board) must be seen to take ownership of, and be accountable for, any strategy designed to improve workplace culture. As evidenced by recent workplaces under the spotlight in the press, it will be impossible to foster good culture if senior management operates a culture of fear, of indifference or of turning a blind eye to alleged bad behaviour to avoid upsetting “the talent”.

To ensure that companies stand by and fulfil their stated aims to improve their culture (usually as part of a wider ESG strategy), increasingly there is pressure to tie executive remuneration to successful delivery.

2. A Plan for Growth

Diversity, equity and inclusion (DEI) remain a key focus for many businesses, particularly those seeking investment. Regardless, it goes without saying that instilling an inclusive organisational culture with leadership that better reflects the communities in which we operate and that rewards the talents of a diverse workforce lowers costs, leads to productivity gains and helps strengthen the fabric of an organisation.

A key deliverable will, therefore, likely be a DEI strategy (including up-to-date equality and antiharassment policies) that seeks to prevent discrimination and aims to ensure equity for all.

3. Train Your Staff

All staff should be given regular training on the key policies relevant to workplace culture, particularly equality and antiharassment policies. Although providing this training to new starters is important, ensuring the training is repeated regularly will help to reinforce those messages and ensures that the organisation is able to rely on the reasonable steps defence so that it is not held vicariously liable in the event of a claim. Make sure your training is comprehensive and the materials are updated for law and relevance, and that senior management is not only invited, but also attends. Antiharassment training will be even more important going forwards considering the new mandatory duty on employers to take reasonable steps to prevent sexual harassment in the workplace, expected to come into force in autumn 2024.

4. Give Your Staff a Voice

Silence is a common thread in workplaces where the culture has become toxic. That alone should be incentive enough for any business to address these issues so that bad behaviour can be recognised and dealt with at an early stage, while the damage may still be limited. But beyond that, the ripple effects are also likely to be felt by other staff members too, which may have implications for mental health absences, employee engagement, retention rates, productivity and so on. Some organisations are achieving this through confidential Speak Up programmes or whistleblowing hotlines.

5. Act Quickly and Properly

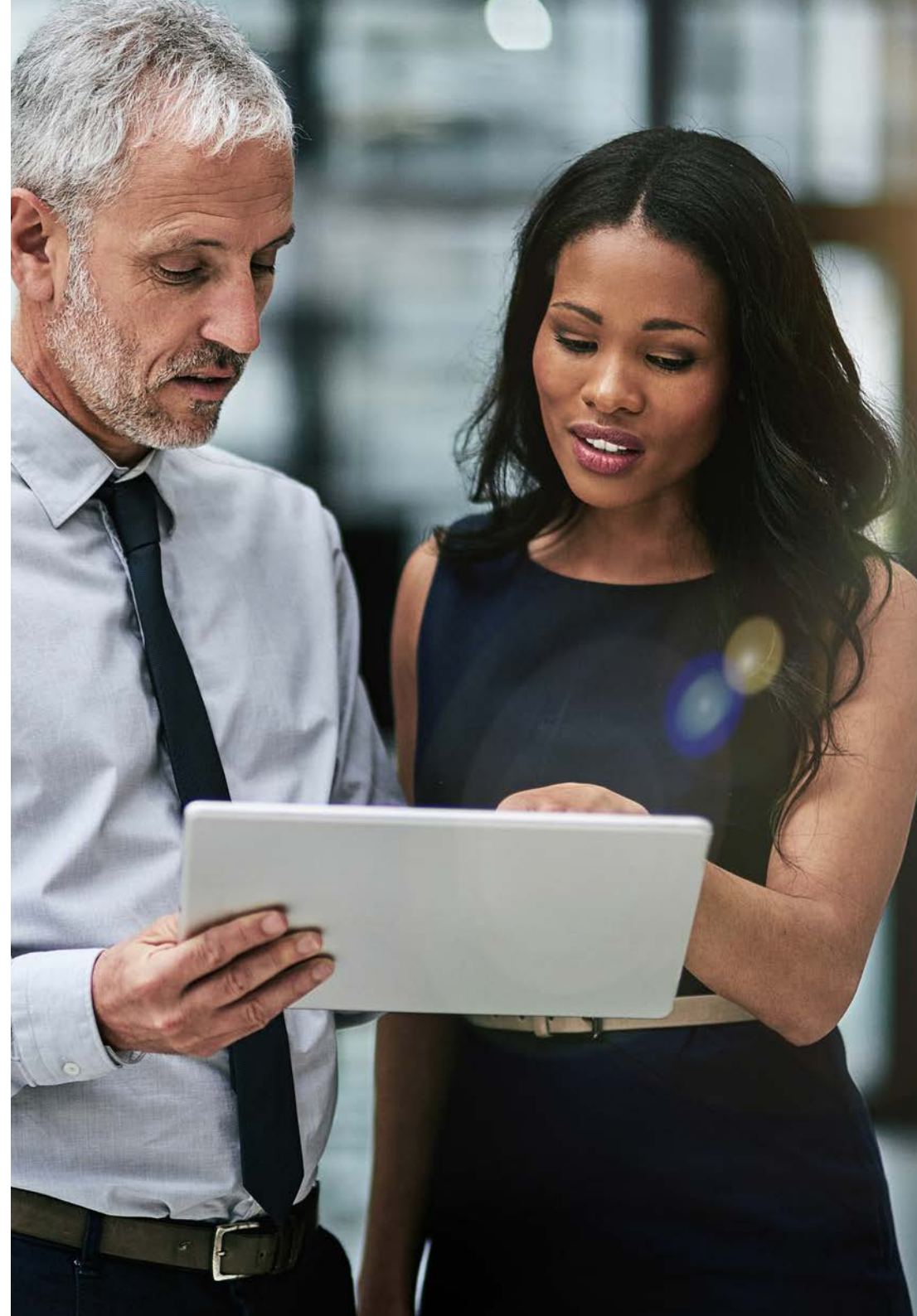
For good culture to thrive, it is important that staff believe that any concerns raised will be thoroughly investigated (if appropriate) in an independent, fair, proportionate and transparent way.

We are seeing an increasing number of clients relying on our expertise to carry out culture reviews to deal proactively with any potential issues at an early stage. It is very rare in the case of allegations of serious wrongdoing that there is not some awareness in the business beforehand. The traditional approach of only acting once a formal complaint is made may be “too little, too late”, in that bad behaviour can then continue unchecked for long periods of time. A culture review may flush out these issues early and allow the business to take swift action against the perpetrators, if that is its decision, and protect the rest of the workforce.

6. Bullies and Harassers Have Rights Too

Acting swiftly and robustly is all very well, but keep an eye on the legitimate expectations of those accused to a fair hearing before key decisions are made in connection with suspension or dismissal, to the maintenance of confidentiality as far as practicable and to be treated as “innocent until proven guilty”. Knee-jerk decisions made in haste may cause more legal harm than the original allegation.

Our team of labour and employment specialists has a proven track record of advising clients on these issues around the world. For more information on our labour and employment ESG service team, please get in touch with the team.



AI-assisted Energy Performance Optimisation and Employee Monitoring

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Artificial intelligence (AI) has the ability to help manage energy consumption in commercial buildings. Numerous AI-assisted products have already been developed focusing on analysing data usage information to manage energy use during peak hours and reduce costs. However, organisations seeking to realise those benefits must balance them against the privacy risks that come with them, particularly in view of recently updated guidance on [monitoring employees in the workplace](#).



AI can be used to automatically adjust settings around commercial buildings, for example, switching devices on and off and controlling lighting depending on whether certain areas are being used or have been in use for a set number of minutes.

Real-time monitoring and automated management of systems can significantly improve energy efficiency, removing the need for human actions such as switching off screens or other devices at the end of the working day or adjusting heating and cooling systems to reflect actual patterns of use and occupation. However, the benefits of reducing human involvement in the energy optimisation process carry some integral risks associated with the potential for employee monitoring. Monitoring in the workplace recently returned to the spotlight after the UK data protection regulator (the Information Commissioner's Office) issued new guidance on monitoring workers. The guidance aims to help employers navigate the complexities of using monitoring technology and provide tools to avoid excessive monitoring that can intrude into employees' lives.

One of the principles the guidance focuses on is transparency. Employers are expected to make workers aware of the nature, extent and the reasons for the monitoring and to explain these items in a way that is easy to understand. This is easier said than done, especially when the monitoring is carried out using AI-assisted technology. AI models have reached a level of complexity that is often difficult to understand and explain. As information processing power for AI has dramatically increased, AI technologies are able to make multiple calculations simultaneously and feed their outputs into numerous decisions, classifications and predictions. It is, therefore, important to consider how these systems and their use of information relating to employees can be explained to employees in simple terms.

It is also essential to ensure that monitoring extends only to what is necessary for the purpose for which the technology is used. AI systems monitoring the use of workplace areas for energy performance purposes pose risks to the data protection rights of employees if they are implemented in a manner that is disproportionate to the reason for their implementation. For example, monitoring employees' movements within the building if the goal of the technology is to generate data to decide when devices in the office kitchen should be switched on and off would naturally feel excessive to the employees being monitored. This would particularly be the case if monitoring of employees' movements within the building extended to matters such as the length and frequency of toilet or kitchen visits, and if the results were used for other purposes, such as performance management and disciplinary procedures. More narrowly focused technology, for example to determine whether the kitchen area is in use at any given moment, would be sufficient for energy-related purposes and would carry less risk of intrusive monitoring.

Dilemmas about the nature of the technology that should be adopted for energy optimisation purposes are often difficult to resolve. Use of facial recognition technology could be seen as a good tool to combine with AI-assisted energy performance systems to reduce administrative tasks for employees. However, the data used for facial recognition – biometric data – is specific to each individual and irreplaceable (contrary to traditional usernames and passwords) and is, therefore, seen as high-risk data that merits special protection. For these reasons, use of biometric data is often restricted to security applications when there is a high risk of an unauthorised person accessing information or premises, and has not been widely adopted in connection with energy optimisation technologies.

Caution should be applied in the decision-making process carried out prior to deploying AI-assisted energy optimisation technologies. The imbalance between an employer's decision-making power and the employees' ability to voice their opinions on the implementation of intrusive technologies is one of the factors a regulator would likely look at to decide if the use of the technology is fair to the employees.

AI is clever and efficient, able to turn sensor data into recommendations and actions for energy use. Therefore, we can only expect to see AI being used more in the employment context. As with all great technological advances, caution will need to be applied in using AI technology in forms that might intrude on individuals' lives, but even more so when such technologies are used in a form that might involve the monitoring of employees in the workplace.



In the Know

Spotlight on Biodiversity and Nature-related Reporting

More than half of the world's GDP, which is valued in the region of US\$58 trillion, is dependent on natural resources and ecosystems. Without action, the nature and biodiversity crises will create uncertainty and instability for businesses and the economy. Many organisations are exposed to physical nature risks, and it is clear that nature and biodiversity considerations are swiftly moving up the "corporate agenda".

What Are the TNFD Recommendations?

The Taskforce on Nature-related Financial Disclosures (TNFD) recently published its final recommendations for organisations to report and act on evolving nature-related dependencies, impacts, risk and opportunities. The TNFD's goal is to instil nature into the heart of business and financial decision-making.

The TNFD disclosure framework includes a set of 14 recommended disclosures structured around the following four pillars:

- Governance
- Strategy
- Risk and impact management
- Metrics and targets

The approach taken by the TNFD is consistent with the approach of the Task Force on Climate-related Financial Disclosures (TCFD) and the International Sustainability Standards Board (ISSB) sustainability-related disclosure standards. All 11 of the existing TCFD disclosures have been carried over into the nature context, and three additional disclosures have been added. The TNFD seeks to integrate climate and nature related reporting rather than creating two parallel sets of disclosures.

Applicability of the TNFD Recommendations

Voluntary market adoption of the recommendation is encouraged by the TNFD, which will track voluntary market adoption on an annual basis through an annual report beginning in 2024. A multitude of organisations have already announced that they are committed to publishing their first TNFD disclosures from 2026, based on 2025 data.

The TNFD has called for governments to make nature-related reporting mandatory in the future, and we expect to see policymakers and regulators directly integrate the TNFD framework into their domestic rules in the coming months.

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What Steps Can My Organisation Take To Get Prepared?

The TNFD framework includes guidance on the identification and assessment of nature-related issues in the form of the “LEAP” approach.

This involves four phases:

- **Locate** your interface with nature
- **Evaluate** your dependencies and impacts on nature
- **Assess** your nature-related risks and opportunities
- **Prepare** to respond to, and report on, material nature-related issues, aligned with the TNFD’s recommended disclosures

In order to assist you with the LEAP approach, we recommend taking the following initial steps:

1. The first key area of focus should be the identification of the most material aspects of your business’s interaction with nature across different value chains.
2. Be cognisant that there is no single number that actually measures biodiversity.
3. Get started with whatever data is already readily available within your organisation.
4. Conduct a corporate governance review.
5. Focus on stakeholder consultations.
6. Start to scope and profile nature-related risks that your organisation has.
7. Consider whether you need to capture more data from customers (and consider how this will be stored, and controls over data quality).
8. Become a member of the TNFD forum, engage and keep up to date on the latest TNFD developments.
9. Consider running a TNFD pilot to test how the framework applies to your organisation, and to help you understand and start to manage your nature-related risks and opportunities.

To discuss the implications of the TNFD on your business contact:



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