



ASIC

Australian Securities & Investments Commission

Directors' duties and culture

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CHECK AGAINST DELIVERY

Introduction

It is good to have this opportunity to speak about culture. Thinking about culture is time well spent. Good culture is critical for businesses that want to be around for the long term.

We are at an exciting time in history, when technological innovation is rewriting almost every industry including the financial services industry.

Recently, Max Levchin, PayPal co-founder and former chief technology officer, said he thinks that his new fintech start-up, Affirm, will challenge global financial institutions with his new model designed to better align with customer interests. Regardless of whether this particular vision succeeds, it is evident that new disruptors will continue to challenge incumbents.

In a new Telstra report, [*Millennials, mobiles and money*](#), it was stated that banks have a 'massive amount of "trust capital"'. This is a major competitive advantage for the traditional financial institutions to leverage, but trust is perishable'. The report goes on to say, 'the threat from fintech is significant'.

In this environment, genuinely considering the needs of your customers is imperative. Firms that do not have a good culture risk losing their customers to firms that do.

I'd like to address the following three topics today. Firstly, what is culture, and why does it matter to ASIC? Secondly, I'd like to talk about the role of the board in supporting strong values and culture. And lastly, I will provide you with an overview of ASIC's work around culture and conduct.

What is culture?

Culture is a set of shared values or assumptions. It can be described as the mindset of an organisation.

Culture is the 'unwritten rules' that govern how things actually work in an organisation. It shapes and influences people's attitudes and behaviours towards, for example, customers and compliance.

This is not a new concept. As you know, it was actually captured in the Criminal Code over 20 years ago, where it is defined as including an organisation's attitude, policy, rule, course of conduct and practice.

Why culture matters to ASIC

ASIC is concerned about culture because it is a key driver of conduct within the financial services industry. Poor culture often leads to poor outcomes for investors and consumers, impacts on the integrity of the Australian financial markets, and erodes investor and financial consumer trust and confidence.

Domestically, the ongoing issues within Australia's financial advice industry, along with recent media reports relating to life insurance and the manipulation of the bank bill swap rate (BBSW), are continuing to undermine investor and financial consumer trust and confidence in the system.

Poor culture can lead to misconduct and result in significant financial costs, including the cost of remediation, compensation and fines. According to research by the London School of Economics and Political Science, the cost of poor conduct for the 10 most affected global banks was approximately US\$250 billion between 2008 and 2012.

Conversely, many studies have found that good culture is beneficial for business and for generating long-term shareholder value. Good culture enhances brand loyalty and bolsters reputation, which has a very real financial impact.

Companies are now starting to realise the importance of their social licence to operate – over and above their legal licence. Social licence is the level of acceptance or approval continually granted to a company's operations by local community and other stakeholders. It requires a company to build and maintain trust and legitimacy from its customers and other stakeholders.

Social licence is dynamic and constantly changing with community values. Firms need to monitor carefully the gap between their social and legal licence, particularly with the advent of social media and the 24-hour news cycle. If you allow the gap to get too wide, you might see the implications of this from your customers and policymakers.

We think culture is vitally important for the organisations we regulate – however, we are not going to dictate the kind of culture a company has. I want to be very clear that we are not trying to regulate culture.

The role of the board in supporting strong values and culture

ASIC is of the view that values and culture leadership must come from the top. In setting the right tone from the top, the board might wish to consider:

- how the board is modelling the firm's desired behaviours and values when interacting with management and staff
- how the actions and behaviours of the board support and advance the firm's desired culture
- how the board sees its role in relation to cultivating the firm's values and ensuring that the firm has a culture of integrity.

Another important consideration is how the board can gain better insights into the company's culture. For directors who are not involved in the daily operations of a company, overseeing culture can be challenging.

But there are a number of ways directors could approach this. A few examples might be to consider the following questions:

- Is the discussion of values and culture a regular feature of board and audit committee agendas?
- Do directors interact with staff across the organisation, and not just the 'C-suite'?
- Does the board hear from key employees, such as business line managers, to help with gathering insights about team-specific issues and subcultures?
- Is there periodic engagement with all stakeholders to get a broad perspective on the issues impacting on customers and other stakeholders?
- Is there monitoring that captures data on key indicators – for example, gathered through employee feedback and surveys, customer complaints, and progress on employee training on culture issues?

ASIC's work on culture and conduct

We have outlined in our [four-year corporate plan](#) that we are incorporating consideration of a firm's culture into our risk-based surveillance reviews to better detect areas of misconduct.

We are particularly focused on remuneration structures, conflicts of interest, complaints handling, treatment of whistleblowers, and timeliness of breach reporting to ASIC.

We are focusing on these areas for three reasons. Firstly, the policies, procedures and systems in these areas generally provides a good indication about the firm's culture, since they tend to reflect the underlying values of the organisation and what the organisation considers to be important.

Secondly, the key performance indicators and metrics that are used to evaluate and remunerate staff, particularly those in the front line, can lead to a misalignment between a firm's value and actual staff behaviour.

Thirdly, in cases where policies, systems and controls have been implemented to support a culture of 'doing the right thing', this does not automatically ensure that they are being appropriately monitored and enforced in practice.

We will use our surveillance findings to better understand how culture is driving conduct among those we regulate.

Conclusion

We recognise that culture is not something that can be regulated with black letter law. Culture is at the heart of how an organisation and its staff think and behave. It is an issue that companies themselves must address. It is the responsibility of each organisation to look at what steps they can take to improve their culture and sustain a 'customer first' culture over the long term.

To improve trust and confidence, companies need to create and nurture a culture that builds a sustainable business that focuses on achieving and rewarding good conduct and good outcomes for customers.

At the end of the day, you need to have a culture that your customers can believe in. If your culture genuinely reflects 'doing the right thing', this will be rewarded with longevity and customer loyalty.