

GENERAL COUNSEL DIVERSITY & INCLUSION INITIATIVE

FRAMEWORK MATERIALS

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MESSAGE FROM THE STEERING GROUP

The General Counsel Statement in support of Diversity and Inclusion (GCD&I) was launched in early 2019 and we are delighted to confirm that we now have 100 signatories.

We have deliberately chosen to adopt a collaborative model as it is only by working in partnership across the profession that it will be possible to achieve substantive change. Against this background at a recent GCD&I Workshop with law firms we tabled a draft of the Framework Materials – an initial selection of papers with the intent of offering guidance and support to deliver real and sustainable change across our profession.

The Framework Materials include:

- Overarching Narrative: what do we mean by D&I in the Global Legal Community? (page 2)
- Note on Proposed Metrics and KPIs (page 3)
- Engaging with law firms on D&I (10 practical steps) (page 4)
- D&I within internal teams (10 practical steps) (page 5)
- Guiding Principles and Engagement Agreement: proposed language samples (page 6)

The draft generated a lot of engaged discussion and we are pleased to confirm that there was support for the approach adopted. The teams have taken on board the feedback and we are delighted to circulate these materials.

We hope that you will use this Framework material as inspiration for your day to day activities and engagement. The content is based on the extensive and varied experience of signatories and their law firms and is intended as a menu of tools rather than a mandated requirement.

As we all know, there is (by definition) no “one size fits all” approach to build a diverse and inclusive team and some of the elements of the materials will be more relevant than others. They are not intended to be prescriptive. In particular, our suggestions on Draft Metrics and KPIs and the creation of an Engagement Agreement along with the language “samples” are offered as examples based on a variety of experiences, and signatories should consider to what extent they may wish to adopt similar provisions when determining the content of their own appointments.

Over the coming weeks and months, we will delve deeper into the materials and we hope that you will share your feedback and insights as you roll them out. We are particularly keen to hear from teams who might be willing to share their experience with the wider community.

Many thanks for your continued support on this initiative.

Kind regards



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Chief Legal Officer & Group Secretary,
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Rosemary Martin
General Counsel & Company Secretary, Vodafone



Caroline Cox
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WHAT DO WE MEAN BY DIVERSITY & INCLUSION IN THE GLOBAL LEGAL COMMUNITY?

DIVERSITY is the different range of perspectives, ideas and experiences that make up the legal workforce. These perspectives, ideas and experiences help law firms and in-house legal functions enhance creative thinking, innovation and problem solving, to adapt and grow in a fast-paced world. Differences can be both obvious and hard-to-see. They can include gender, race, sexual orientation, disability, cultural background, neurology, religion and age.

INCLUSION embeds a culture where all staff experience a strong sense of belonging and affiliation to their law firm or in-house legal function. This requires a safe, positive and caring environment in which everyone's perspectives, ideas and experiences are understood, embraced and valued. People feel they can relate to a common goal, are fairly treated, can learn and develop without boundaries and are able to contribute their whole, authentic selves in the workplace.

Diversity and inclusion are intrinsically linked. A diverse workforce requires an inclusive workplace to thrive. A law firm or in-house legal function which seeks diversity may attract a broad range of people to its workforce, but if inclusion is not part of the organisation's culture, those people may not realise their potential, or may not be retained and their benefit to the organization is lost. The understanding of the link between diversity and inclusion is often referred to as "diversity of thought".

The business case for D&I in law firms and in-house legal teams.

There is overwhelming evidence that diverse and inclusive teams outperform others on a wide range of metrics. A law firm or in-house legal function culture that embraces D&I is equipped to attract, develop and retain the best people from an increasingly diverse global talent pool, and will tangibly demonstrate the following:

1. Improved relationships with clients, suppliers and business partners. Like-minded law firms and in-house functions will together build productive relationships that meet each of their needs.
2. Greater flexibility in the face of change as a result of an improved understanding of challenges and opportunities presented by the world at large.
3. Improved collaboration through increased information and know-how sharing. Access to a broader pool of ideas and innovation creates more business value.
4. Happier, more productive lawyers and teams excelling in a safer workplace.
5. Better quality meetings and conversations with clearer output and actions.
6. Enhancements to law firm and business brand and reputation.
7. Staff with better interpersonal skills - especially an increase in self-awareness.
8. People with a learning mindset who proactively seek personal growth and development.
9. Reduced bias and negativity which promotes a "can do" attitude.
10. Flexible and agile working practices which focus on output rather than presenteeism, leading to increased productivity and a better work-life balance.

For law firms and in-house legal teams, this supports the provision of exceptional quality legal advice and more informed risk decision making, to the benefit of our clients and our businesses.

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DIVERSITY AND INCLUSION: PROPOSED METRICS AND KPIS

OBJECTIVE

Metrics assist in measuring progress and driving accountability, both within firms and in-house teams.

We recognise a balance must be struck between the time taken to report against metrics, and the time dedicated to driving real change.

With this in mind, our objective is to define a **uniform** set of metrics for signatories to adopt and seek from their relationship firms on an **annual basis**, which are both **meaningful** and **readily produced**.

LAW FIRM PROPOSED ANNUAL METRICS AND KPIS

In line with our objective, we propose the following metrics:

1. Gender ratio of billed hours on the client's matters, broken down by seniority.
2. Gender ratio of non-billable/written-off hours for the client's matters, broken down by seniority.
3. Gender ratio for origination credit on the client's matters.
4. Gender ratio for relevant seniority levels and firm leadership roles (i.e. Associate, Senior Associate, Counsel, Non-Equity Partner, Equity Partner, firm management roles; managing relationship roles for client accounts), as well as ratio of attrition and promotion for each level or role.

We also propose to seek feedback annually on the following:

5. Do you have diversity targets and if so, please describe the target and your progress.
6. Please describe two significant initiatives you're undertaking in order to create a more diverse and inclusive culture at your firm.

IN-HOUSE PROPOSED ANNUAL METRICS AND KPIS

We are committed to in-house metrics as a basis for sharing lessons, and holding in-house teams accountable and propose to provide the following on an annual basis:

1. Gender ratio of team by seniority level.
2. Annual of promotions and attrition by gender to relevant seniority levels.
3. Gender ratio of team working flexibly.

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ENGAGING WITH LAW FIRMS: TEN PRACTICAL STEPS

1. **Communicate** the importance of diversity and inclusion regularly and purposefully to law firms and encourage close collaboration to embed a culture of inclusion and diversity within the legal profession, for example by:
 - a. writing to law firms to underscore your commitment to diversity and inclusion and set out actions that can be undertaken together;
 - b. regularly bringing up the topic of diversity and inclusion in conversations with relationship partners and external lawyers (e.g. by including on relationship management agenda); and
 - c. referring law firms to published policies and documents relating to the diversity and inclusion position adopted by your company.
2. **Foster** ongoing dialogue with law firms by periodically (e.g. quarterly) meeting with them to discuss approaches to diversity and inclusion, establish “must haves”, track progress made to-date, identify successes and failures (on both sides), share respective metrics (e.g. gender balance, flexible work uptake, cultural diversity) and identify goals and systems for tracking progress.
3. **Praise** positive actions taken by law firms to promote diversity and inclusion, as well as providing and receiving two-way honest and constructive feedback where necessary.
4. **Build** your network of external lawyers across all levels and backgrounds and facilitate opportunities for lawyers from under-represented groups to engage with and support your company.
5. **Consider** who makes and receives the first “call” when instructing external law firms on new matters to ensure breadth and diversity of work distribution; and consider recording who makes and receives initial instructions to track progress.
6. **Emphasise** your commitment to, and expectations regarding, diversity and inclusion in all RFPs sent to law firms.
7. **Ensure** that diversity within proposed deal teams is a key consideration when engaging law firms and communicate clearly to law firms instances where their approach to diversity and inclusion has influenced your decision to work with them (one way or the other).
8. **Respect** and positively acknowledge lawyers’ time out of office by providing clear and reasonable deadlines, clarifying what is and is not urgent, promoting responsible delegation and expressing your appreciation when lawyers are ultimately required to work long hours and / or meet tight timetables.
9. **Support** flexible / agile / smart ways of working with law firms, for example by:
 - a. holding a rules of engagement meeting at the commencement of the matter to meet the full team and establish parameters for how the matter is managed;
 - b. seeking availability of external lawyers prior to scheduling meetings;
 - c. utilising where possible collaborative and agility-enhancing technology for communications and meetings (e.g. instant messenger systems, video and other conference call platforms etc.); and
 - d. avoiding requesting external lawyers to travel long distances (if not possible, avoid scheduling meetings that require weekend travel).
10. **Recognise** lawyers working part-time and not just those working full-time by considering ways in which to work effectively with them and ensure they are (and feel) part of the team.

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D&I WITHIN IN-HOUSE LEGAL TEAMS: TEN PRACTICAL STEPS

1. Know your organisation's **D&I vision and strategy** and develop one for your team, aligned to that for the overall organisation. Establish a framework to drive D&I in your organisation with authority and accountability (e.g. a D&I committee or champion(s)). Set short-, medium- and long-term time-based plans for D&I, with associated goals (e.g. gender diversity, cultural diversity, building an inclusive environment).
2. **Hold your leadership accountable** for implementing D&I vision and strategy, whether internally or towards suppliers, to create a strong and purposeful D&I culture in your organisation. Set individual D&I goals for leaders and review how those goals are achieved. Bring D&I to the regular agenda of your leadership team. Encourage role modelling and engagement, internally and externally.
3. Define short-listing criteria when recruiting, to ensure you consider a **diverse slate** of candidates when **hiring**. Ensure internal recruitment teams or external search firms have the right diversity expertise and hold them accountable for delivering high-quality, diverse slates of candidates.
4. Integrate D&I in your **talent programmes**, retention measures and decisions about advancement. Create a culture where employees are encouraged to and feel accepted and valued when taking developmental positions outside their current area (e.g. expertise, geography) and ensure internal job postings are always published. Create a sponsorship programme for diverse talent. Promote a mentorship and/or reverse-mentoring programme.
5. Promote **work-life integration, flexibility and wellbeing**. Advocate flexible working and provide technological support for mobility, disabilities and flexible working. Encourage people to bring their full self to work and permit flexibility in personal style and appearance. Consider committing to the Mindful Business Charter.
6. Ensure **unbiased job design** and classification and **equitable compensation**. Design roles in an inclusive manner to accommodate a diverse range of individual needs and potential candidates for roles. Create a broader sense of fairness through transparency about job classification, performance evaluation and compensation systems.
7. **Invest in learning** and educate your team to ensure they have a high level of D&I knowledge, competence and confidence. Integrate D&I into your onboarding and/or learning programmes, using different and accessible formats. Put special focus on (un-)conscious bias awareness training to manage bias when recruiting, assessing and promoting talent. Provide cultural competency training and support.
8. **Measure your success**: ensure that assessment, measurement and research regarding D&I guide your decisions. Conduct an inclusion survey and use the results to create a baseline and an action plan – measure annually. Introduce KPIs to follow the progress of your team's D&I and track them regularly and hold leaders accountable. Study internal and external best practices and benchmarking to improve.
9. **Be an advocate** for D&I: make communication a driving force in your D&I goals. State your D&I aspirations, what you are doing and why you are doing it. Do so internally and externally, frequently and consistently, and always in an accessible way, in multiple formats and languages. Share your D&I survey results and statistics with your wider organization.
10. Make D&I a **sustainable force** in your organization. Recognize D&I as a key aspect of your culture and a contributing factor when announcing a success. Walk the talk but also acknowledge where you need to improve. This will increase awareness and accountability and will lead to sustainable cultural change.

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FRAMEWORK GUIDING PRINCIPLES AND RECOMMENDATIONS

Guiding Principles

1. **Partnering** - Play an active role across our signatories, industry partners¹, and vendors². **Champion** the D&I guiding principles, helping your organisation and others achieve their goals. **Ensure** you leverage data and metrics as contributions to improve your ways of working both with internal operations and with external relationships.
2. **Reciprocity** – Cultivating reciprocity is imperative. This framework offers an opportunity to apply these concepts in practical ways within your organisation by pledging to incorporate elements into your framework agreements³.
3. **Transparency** - Ensure that assessment, measurement and research regarding D&I KPIs are reported.
4. **Maturity Model** - The intent of the framework guiding principles is to provide organisations **tips** on how they can participate. We recognise that every organisation is unique and may be in different stages of their journey, fitting into one of 3 models: Initial⁴, Planning⁵, and In-Flight⁶. Know your organisation's D&I vision and strategy⁷ and incorporate some recommendations on what should be included in your framework agreements to drive D&I.

Recommendations

1. **Governance**- Setting panel goals and approach to governance. Adopt GCD&I Statement of Support standards. Draw from the list of best practices that the GCD&I have produced on the most impactful initiatives your panel firms will commit to implement.
2. **Metrics/KPIs** – Adopt GCD&I developed metrics to appraise performance. Leverage the GC Statement of support approach to yearly surveys and measure KPIs/metrics ⁸.
3. **Consequences** - Appraise and monitor progress, against your panel framework agreements. Clarify performance or non-performance measures and provide internal training on engaging outside counsel. Provide external competency training to your panel. Suggested measures are:

Performance

1. Preferred Status on bid opportunities
2. Increased relationship building
3. Invites to certain internal events
4. Regular touch points with leadership

Non-performance

5. Lower priority on bid opportunities
6. Probationary period based on performance
7. No improvement, possibly end relationship

¹ E.g. ABA 113, Mansfield Rule. (<https://www.diversitylab.com/pilot-projects/mansfield-rule-2-0/>)

² E.g. ACC, ABA, TWLL.

³ GCD&I Framework Agreement Template will be shared on the website.

⁴ Initial – Just starting, signing up as a signatory but have a long way to go to start the planning stage.

⁵ In-Planning – The organisation has definition around this and complete buy in. We are in the planning stage.

⁶ In-Flight – Planning is ongoing, we are integrating steps now.

⁷ D&I within In-House legal teams: 10 practical steps page 5.

⁸ Diversity & Inclusion: Metrics and KPIs page 3.

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ENGAGEMENT AGREEMENT LANGUAGE “SAMPLES”

Matter Management Mandate

In order for this matter to be classified as D&I Compliant, it must have a defined structure around the GCD&I best practices to provide assurances best practice and KPIs are utilized. We utilize the published GCD&I KPIs and are open to options that work for your firm. Some examples of KPIs are Gender ratio / billed hours – broken down by seniority level, Gender ratio / file value – broken down by seniority level, Number of promotions by Gender to Senior Associate, Counsel, Non-Equity Partner and Equity Partner, Gender ratio by origination credit, Gender ratio of non-billable hours and written off hours on matters – broken down by seniority levels, etc.

Reciprocity Mandate

Cultivating reciprocity is imperative. We are also committed to (1) transparency with in-house metrics which we will share with firms as a basis for sharing lessons and holding in-house teams accountable. Some examples of KPIs are Gender ratio of team by Seniority level, Promotions by Gender annually to relevant senior levels, and Ratio of team working flexibly, etc. (2) Re-engage with career conversations with “paid secondments”, for lawyers returning to work following parental leave. E.g. offered 1-year onboarding assignments by COMPANY. COMPANY agrees to discuss any potential proposals in a letter of engagement in good faith.

Material Change

If there is a material change in the expected budget/case strategy, which includes KPIs, then the Firm shall raise the matter with the Instructing Lawyer as soon as foreseeable and without delay. COMPANY agrees to discuss any potential amendments to the letter of engagement in good faith. Any necessary out of scope work and additional fees not covered by this engagement must be reviewed and approved by the Instructing Lawyer in advance of such work being carried out; otherwise COMPANY will not be liable to pay for such fees.

AFA Mandate

In order for this matter to be classified as an AFA (Appropriate Fee Arrangement) , it must have a defined structure around the fee agreement to provide budget certainty. We utilize many types of AFAs but we are open to options you may work for your firm. Some examples of AFAs are fixed fees, capped fees by phases, success bonuses, etc.

Strategy and Management Commitment

LAW FIRM will work closely with COMPANY’S in-house counsel to develop an effective strategy, create, submit and manage the matter budget that breaks down “effort” by timekeeper in line with GCD&I commitments associated to each phase, milestones, or appropriate fee arrangement, and to make critical decisions in a cost effective and timely manner. In litigation matters LAW FIRM agrees to adhere to the GCD&I KPIs in the handling of matters for COMPANY.

Transferring Attorney

In the event that LAW FIRM employs or hires a transferring attorney already providing legal work to COMPANY NAME, then at COMPANY’S request, subject to conflicts of interest, LAW FIRM shall accept a transfer of such legal work to LAW FIRM, which shall fall under the terms and conditions of this Framework Agreement. LAW FIRM agrees to use good faith efforts to agree to a fee arrangement for such legal work based on COMPANY’S previous fee arrangement for the transitioning legal work as evidenced by an applicable engagement letter. LAW FIRM also agrees to offer transparency on time keeper GCD&I KPI commitments.

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ENGAGEMENT AGREEMENT LANGUAGE “SAMPLES” Continued...

Staffing

To achieve our goal of efficient staffing and D&I tracking, COMPANY requires LAW FIRM to identify in writing the LAW FIRM Personnel assigned to a matter and the tasks they are assigned to as noted in the budget. The identification (along with the position and agreed rate for each Person intended to work on the matter) must be provided when the matter Engagement Letter is signed.

The assignment of staff must be made in consultation with the COMPANY in-house lawyer. Approval for additional staff must be obtained in writing before unauthorized LAW FIRM Personnel perform any work on the matter. Invoices containing charges for unauthorized LAW FIRM Personnel will not be paid.

Fee and Budget Requirement

(a) Unless otherwise agreed with the instructing COMPANY in-house counsel, all matters will require a detailed fee estimate, and budget (which shall include an estimate of reimbursable expenses), coupled with an appropriate fee arrangement (AFA), and GCD&I commitments; details of any increase in scope, team re-allocations, or extra work required must be provided in writing to COMPANY with full explanation before the work is commenced. Confirmation of an increase in scope or extra work or change in fee arrangement will be subject to the COMPANY in-house counsel's prior written approval.