



**Mentoring Circle**

**Outcome Report**

**Topic: Conscience**

**Date: 20 July 2016**



**INSTITUTE OF DIRECTORS  
SOUTHERN AFRICA**

The aim of the Mentoring Circles is personal development, building a community of directors, and contributing to the social and personal competencies of the Director Development Framework.

## The Challenges

- One perception is that non-executive directors have good intentions, but that executive directors' values are mainly focussed on personal benefit.
- Fear of the consequences of speaking out about issues on one's conscience can prevent issues being raised. Some of the issues include improper board processes, unethical or incompetent performance by the CEO, Chairman or other board members, and management misleading the Board through selective information sharing. The consequences of concern include threats to one's job and loss of income. This is a particular issue for company secretaries, who are party to executive and Board matters.
- It can be difficult to express one's conscience in the face of a power-block on the Board, or politically connected individuals and political processes.
- One matter of conscience is executive remuneration, but if this is addressed, all directors may suffer, including the person who raised it.

## The Solutions

- The fiduciary duty of directors requires them to apply their minds to the decisions they make and the decisions the board makes. This includes consideration of values and conscience, not least as expressed in King III. Every director needs to make a judgement call about the personal cost of raising – or not raising - issues of conscience.
- If speaking out within the Board against something that is a significant matter of conscience is not an option (for any reason), there is always the option to resign, and use whistle-blowing mechanisms to address the problem. The debate about whether to stay and try and fix the problem from within, or to leave is a very personal decision, and highly dependent on context and circumstance.
- The Chairman should play a fundamental role in all Board matters, including regular one-on-one discussions with directors, in which meetings matters of conscience may be raised, if it is not possible to raise them in Board meetings. The Board should discuss perceptions and understanding of what is considered ethical.
- When raising difficult matters of conscience, consider not only what is said, but when and how it is said. These matters should never be a surprise in a Board meeting, and it may be useful to raise them outside of official meetings with individual colleagues first. It may also be that the appropriate forum for these matters could be the audit or ethics committees, who could recommend a review of the Board Charter, or the policy on executive remuneration.
- Stakeholder representation and a preponderance of non-executive directors on the Board can assist in matters of conscience. In addition, too many decisions on South African boards are currently simply taken as carried. All matters should be put to the vote, and if one's conscience disagrees with the vote, this must be expressed, captured and minuted. Both internal and external audit can be used to raise and address certain difficult issues.
- When agreeing to serve on a Board, an appropriate due diligence might help inform a prospective director if the way the Board runs is likely to affect their conscience. This would include issues like length of service, which should be included in the Memorandum of Incorporation.
- Using risk and liability language can be a less personally threatening way to raise matters of conscience, in that the particular behaviour or issue can be raised as posing a risk to the company. Directors must also be fully educated as to their personal risk and liability exposure. Phrasing difficult issues as questions for clarity can also diffuse potentially confrontational situations. Finally, if an issue has been actively blocked from the agenda, it can be raised under "General", although this might prompt push-back from the Chairman.
- Annual Board appraisals are required. These can assist in identifying dysfunctional power blocks.
- Boards must define the criteria for the information they want to receive, and its format – essentially the KPIs for information flow from management.