

Dealing with Disruptive Directors

How to Handle Directors who become obstacles to Better Board Performance



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Directors and boards face a variety of challenges, risks, and existential threats. Many of these are external and disruptive. They arise in the external, geopolitical, technological, and other contexts within which companies for which they are responsible operate. Their impacts and the required corporate and collective responses also pose challenges for CEOs and executive teams. However, sometimes, and more often than many would like, the source of disruption is internal. Directors themselves may be the problem. Their deficiencies and behaviour might be disruptive, distracting, and/or inhibiting for their fellow board members, a CEO, C-suite executives, and possibly also other management colleagues.

Effective company direction often involves striking a balance between contending aspirations, priorities, and interests and achieving sufficient alignment between them and enough common purpose to enable a consensus to emerge on the most appropriate and responsible way forward. A diversity of perspectives, experiences, and insights, active challenge and questioning, independent and critical thinking, and lively discussion and debate can build collective understanding and be positive and productive. However, beyond a certain point, differences may become difficult to reconcile and consensus impossible to achieve.

The value that boards add and their contribution to the success or otherwise of a company can greatly vary according to situations, circumstances, and contexts and may alter over time. Their effective operation and responsible performance of their duties and responsibilities cannot be assumed. Some boards go off the boil, while others add much less value than one might expect. Corporate results may largely derive from the work of a CEO and management team, or product and pricing decisions in certain business units, rather than inputs from the board. Many businesses are constrained and limited by the ambitions, policies, and priorities of their boards and/or the value added or reduced by individual directors.

Recognising disruptive behaviours

Many boards are far from ideal. In addition to carrying 'passengers' who do not think for themselves and 'go with the flow' in accordance with prevailing groupthink, their effectiveness may be undermined by the attitudes, approaches, and conduct of certain members whose behaviours have a negative impact on others. Directors should not be rubber stamps. Differences of opinion on some issues might be expected, and steps might be taken to resolve them. Some allowances may also be made if the overall contribution is sufficiently positive. However, intentional and motivated disruption can be a different matter. It can lead to division, deadlock, insecurity, and a lack of clarity and strategic direction.

Experienced board members may well have encountered various forms of disruptive behaviour, whether intermittent on particular issues or more persistent. Many directors, and especially those with senior executive backgrounds, are sometimes tempted to micromanage and become involved in operational matters that should be addressed by management. They may be overly critical and ready to interfere. Rather than supporting the executive team, their negative comments can unsettle and undermine them. In extreme forms and on occasion, board members with strong and successful executive and CEO backgrounds can dominate proceedings, inhibit expressions of counterarguments, and inhibit management team development.

Disruptive behaviours can vary from minor inconvenience and occasional feelings of discomfort to a paralysing factor that has gone too far. Checking one's email during a meeting rather than listening to the

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business of a board is bad manners. It could be concerning if it is widespread and reflects badly on a board chair. Directors who sometimes appear lost, ramble, waste time, and have little if anything to contribute to the discussion of complex financial, technological, and strategic issues represent dead weight. Their deficiencies might be exposed during board reviews, especially independent ones. Aggressive behaviour, verbal abuse, and unjustified confrontation should not be tolerated and may require disciplinary rather than developmental action or caution. Ploys to undermine or discredit can be insidious.

Deciding whether to tolerate or to act

Disruptive behaviours may be tolerated for a variety of reasons. Individual directors can meet each other infrequently at board meetings, during which their interactions with colleagues may be limited. They might not be aware of whether any irritation they feel is shared by others. Newly appointed directors may also take some time to settle in before they feel sufficiently confident to raise an issue or 'rock the boat'. Board cultures often avoid confrontation. The responses of others may be uncertain. Alarm bells may not ring until a pattern of unacceptable behaviour is established. When issues arise, other matters may seem more important. The source of an irritation might be a protégé or ally of a board chair, sponsor, controlling shareholder, or CEO. Some directors 'get away' with more than others.

Addressing underperformance in the boardroom can be an unwelcome distraction at an inconvenient or difficult time. The prospect of having to tackle disruptive behaviour and possibly remove a director, and then seek a replacement can cause some people to tolerate an existing situation. However, there are occasions when action may be required. Sometimes, individual directors begin to become restive if a situation that they judge needs addressing is not first identified by an annual board review or a board chair and/or company secretary. Negative impacts, risks, and what is at stake may increase if certain behaviours or conduct are unchecked. An issue could be at the main or subsidiary board level, or it might arise or be evident within a committee of a board, or when other parties are present.

A catalyst of concern may evolve or suddenly arise. It could be an act or a failure to act, disclose, or declare an interest. Sometimes it is not easy for an individual director

to determine who might be ready to support action to address disruptive behaviour. Among board colleagues may be those who come unprepared for meetings and who do not seem to pay attention during them. They just turn up and are recorded as present. Others are either over boarded or seem out of their depth. They contribute little and have limited bandwidth to accommodate anything new. Many boards contain members who rarely challenge. They generally go along with the views of a chair or CEO and may speak in support of them and take steps to downplay certain issues and deflect criticism.

Possible courses of action

Steps taken to deal with disruptive behaviours will depend on the situation, circumstances, and context. The provisions of company constitutions and different jurisdictions, legislative frameworks, contractual arrangements, and investigatory, review, disciplinary, and development processes and practices can also vary, as might legal and professional opinions. Assessments of the seriousness and urgency of a situation may depend upon who is involved, how many people are affected and to what extent, and the sort of action options that are suggested or proposed and available. A case might be 'cut and dried' or an incident or event could have the effect of opening Pandora's Box of possible reactions and further eroding any remaining consensus.

Sometimes an enquiry or investigation may be concerned with symptoms, rather than an underlying cause and/or may divide opinions or highlight those that already exist. It might also lead to defensive reactions and hostile situations. Reluctance to act may be because of potential procedural issues, other perceived difficulties, or the people involved or who might be affected by any moves made. Consultation with the CEO or other directors may be advisable. Should the behaviour complained of be that of a board chair, the involvement of a senior independent director may be required. A review of someone who is both a board chair and a managing director can be especially challenging. Sometimes those who raise issues find that they themselves come to be regarded as a 'problem'.

Some situations may form part of an annual performance review process. Others can arise between such reviews and may need to be tackled. An ad hoc meeting might have to be set up between the board chair and the individual board member concerned. This may need to

be handled sensitively but professionally and a right of reply given. Behaviours of concern might involve more than one director and represent a possible contravention of a director's service contract, notified expectations, and/or a law, regulation, agreement, or code of practice. A company secretary or legal counsel may need to be involved to ensure that proper procedures are followed. Depending on the circumstances, other parties may be involved, and questions relating to disclosure can arise.

Reactions to suggestions of disruptive conduct

When others make a case for constraining or removing a particular board colleague, a director should exercise independent judgment and check that any proposed action is justified and proportionate. Are attempts being made by a clique to deflect attention, distract or 'cover up', protect a vested interest, limit a reasonable challenge, and silence an opposing viewpoint? How clear cut is inappropriate behaviour or illegal conduct? Is there evidence of incompatibility or of a grudge or vendetta? In some cases, it may be straightforward. Others are less so. A deficiency or source of disruption could be what directors do not do rather than individual or collective actions. Many boards miss opportunities. Whether an apology is enough could depend on the nature and scale of what has been overlooked, missed, or forgone.

On occasion, genuine differences of opinion may arise, and board membership might fragment into two or more factions with contending or contradictory views. An expression of a strongly held position that certain board members may support might be considered disruptive by someone of a different opinion. The longer an impasse persists and the greater the pressure for a decision, the more likely it may be that some of those holding a majority view and wanting to move on might regard continuing opposition or delaying tactics as disruptive. A board chair seeking consensus may be reluctant to force an issue and risk dividing the board. On occasion, preserving board unity may take priority and prevent the grasping of a nettle.

Those whose conduct is questioned may react in different ways, whether to learn and amend or to defend their positions. Do the parties involved understand why an issue has arisen? Is it possible to identify points of difference? Refusal to change in ways that are acceptable to colleagues may result in further action, which could include disciplinary steps or the removal of a director

from a board. In some cases, a legal defense team may be assembled. In a contested case, an allegation of libel and/or counteraction may result. Acting against disruptive behaviour can make significant claims upon the attention and time of a board chair, company secretary, and other board members who may need to become involved. However, a failure to act might result in continued disruption.

Consensus, groupthink and unitary boards

In jurisdictions with a unitary board tradition, the principle of collective responsibility may cause board chairs to persist in the search for consensus rather than force a vote. It may also result in less effort to increase the diversity of opinions and perspectives, and some board members may be more willing to consider certain colleagues who prolong debates by insisting on expressing their views as disruptive. What a colleague believes is a new angle might be viewed by others of a different persuasion as the repetition of a point that has already been made with the intention to prevent progress. The principle of collective responsibility may cause certain behaviours whose purpose is to avoid personal accountability or limit possible risks rather than progress the business of a board.

A director who is concerned about the prevalence and extent of groupthink should be alert to attempts to limit, stifle, or misrepresent the views of board members whose opinions differ from those of a powerful or influential clique. The case for widening the gene pool from which new directors are selected could be put forward. Human behaviour traits include the search for mitigating factors or someone to blame when things go wrong, reactions are slower than one might expect, or outcomes are disappointing. More frequent requests from fellow directors for their dissent from certain decisions to be recorded could also indicate a desire to avoid individual accountability and less concern with consensus and collective responsibility.

Attempts by regulators and investigators to identify who has been responsible and who should be held to account when corporate scandals, financial frauds, and governance failings occur can increase pressure for steps to look beyond the collective responsibility of a board and at the individual conduct of directors. Responses around the world have included the tightening of regulations and involved individual service contract provisions, roles and responsibilities, and governance arrangements. More

emphasis on individual responsibility may also lead to more defensive reactions from directors when attempts are made to investigate or remove them. Some react by keeping quiet and avoiding involvement.

Implications for aspiring directors

While a blame culture may be undesirable, an accountability culture could lead to higher expectations of individual director conduct and collective board performance. As a result, some board members may be more willing to address the behaviours of individual directors that negatively impact collective board performance. For an aspirant director unfamiliar with the people and personalities around a boardroom table, their individual and collective behaviours, and how they interact, joining a board may seem like a leap in the dark. New members may find themselves confronting deception, conspiracies to defraud, insider trading, scams, and illegal as well as undesirable activities. Ethical and other professional advice should be taken when considering possible courses of action.

Due diligence may provide some illumination, but vigilance, integrity, judgment, and balance are also required. Preparation should include understanding the duties and responsibilities of company directors and applicable company law, regulations, license conditions, and other requirements in jurisdictions in which a company is active. What may seem arduous might

protect a director from penalties where and when others have different values or avoid disqualification when a filing is overlooked. Responsible directors and boards act not only to protect themselves but also to safeguard the interests of others, including stakeholders and members of the public affected by corporate operations and activities.

In some jurisdictions, the average size of certain types of boards has fallen in recent years, reflecting the increasing challenge of maintaining consensus with larger groups as greater demands are placed upon directors and social media practices accentuate divisions. Fragmentation, collaboration, more complex interconnections and interrelationships, flexible working, multiple appointments, and greater diversity can all increase the number of points of difference and give rise to further conflicts of interest. Handling them with sufficient unity to resolve issues and provide strategic direction may become an increasing challenge. A common and shared purpose can aid in the achievement of consensus and collective action. ■



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