2026 Horizon Scanning: Mid-Year Update

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What General Counsel and Company Secretaries need to know for 2026 – Mid-year update

Discover the pivotal governance trends set to shape the corporate landscape in the second half of 2026 and learn how your organisation can stay ahead of the curve

Key highlights:

1	Enhanced employer obligations and employee protections to come into force in October 2026
2	"Comply or explain" – FRC's updated guidance on explanations and flexibility
3	Senior managers and corporate criminal liability – the extension of corporate criminal liability to senior managers
4	Regulated firms: FCA oversight extends to misconduct beyond financial matters from 1 September
5	New proposed EU/UK merger guidelines
6	What audit committees want directors to understand
7	Using generative / agentic AI in audit – FRC identifies risks and mitigation
8	Incoming EU AI and cybersecurity regulation with extraterritorial reach
9	Voluntary Cyber Resilience Pledge
10	Trends: Ethnic diversity of boards and senior management – meaningful progress but decline in "Black Representation"

1 Enhanced employer obligations and employee protections

The Employment Rights Act 2025 has introduced, and continues to introduce, sweeping changes to UK employment law. Following the April 2026 reforms (covered in our January 2026 publication), several significant reforms are now set to take place in October 2026.

A summary of the October 2026 reforms are as follows:

- **Enhanced protection against harassment:** Employers must take "all reasonable steps" to prevent sexual harassment. This raises the threshold from the current standard and requires employers to take proactive steps to manage risk as well as document the preventative actions taken. Employers can also now be liable for discriminatory harassment committed by third parties (e.g. customers and clients), where they have failed to take all reasonable steps to prevent it.

  Employers should take steps to review their policies and procedures for risk assessment purposes. Regulations setting out what constitutes "reasonable steps" are expected to be published in 2027. Until then, the EHRC 8-step guide in preventing sexual harassment at work remains a useful reference.

- **Extension of Employment Tribunal time limits:** The time limit for bringing most Employment Tribunal claims will double from 3 to 6 months, giving claimants and their advisers significantly more time to gather evidence and file claims. Taken together with the recent extension of the ACAS Early Conciliation period from 6 weeks to 12 weeks, this leads to a longer period of uncertainty for employers, and may lead to an increase in claims overall.

- **More changes to trade union rules:** A requirement to provide workers with a written statement confirming their right to join a trade union will take effect. In addition, updated rules on a trade union's right of access to workplaces to meet, represent, recruit and organise workers (excluding the organisation of industrial action) will come into force.

Major changes to the unfair dismissal regime are also on the horizon for January 2027. The first of 2 changes which carry particular weight for employers was previewed in our January 2026 publication – the cap on compensatory awards for unfair dismissal claims is being removed, meaning there will no longer be a limit on the amount that can be awarded by the employment tribunal (currently the lower of 52 weeks' pay and £123,543). The second change relates to the qualifying period of a claim – all employees will now have the right to claim unfair dismissal after 6 months (currently 2 years).

These reforms will fundamentally alter the landscape for employee exits. Employers should anticipate a significant increase in claims, with the potential for substantial awards for senior executives. Many employers are considering accelerating any planned exits to the second half of 2026 to ensure terminations take place in advance of these changes.

Please see here for further commentary from our Employment team, including the practical steps employers can take now to ensure they are prepared for the continually evolving landscape.

2 "Comply or explain" – FRC's updated guidance on explanations and flexibility

When implementing the new UK Corporate Governance Code ("**Code**") in 2024, the FRC observed that misplaced market sentiment had turned the Code's flexible 'comply or explain' mechanism into something resembling a rigid compliance exercise from which companies feel they cannot depart, noting that companies striving to declare compliance with the Code had often led to boilerplate language and ineffective reporting which lacked substance and does not reflect the way in which they actually operate. The FRC believes that stakeholders should not expect or even favour strict compliance over effective governance that meets the spirit of the Code, and that it is more important to consider the explanation provided by a company and evaluate whether the alternative governance arrangement is actually more suitable.

In an attempt to encourage companies to depart from boilerplate disclosures, the FRC has therefore published updated guidance on 'comply or explain' reporting which includes a checklist setting out what a good explanation of any departure from the Code looks like. The guidance suggests that companies should ensure that their explanations:

- set the context and background, explicitly naming the provision which has not been complied with and describing the circumstances and reasons for non-compliance;
- provide a convincing rationale for the approach taken, setting out the alternative arrangement chosen and, for indefinite departures, providing a fuller account of why that alternative is preferable;
- address any risks arising from the alternative approach and describe any mitigating actions taken or planned;
- make clear whether the departure is time-limited or indefinite, and if it extends beyond the reporting year, provide an estimate of when the company expects to return to compliance; and
- be understandable and persuasive, written in plain language that leaves no room for ambiguity and gives investors and stakeholders sufficient detail to evaluate the departure.

Whilst previous FRC guidance and the Code itself had been framed principally around what companies should do, the updated guidance now goes further to target investors and proxy advisors who the FRC believes are partially responsible or should be considered to be partially responsible for the culture of boilerplate compliance. Notably, the FRC is now specifically encouraging such shareholders and proxy advisors to view departures from the Code more positively in their voting policies, especially where explanations have been transparent and informative, rather than treating departures as a default negative.

The FRC intends to publish its findings on the quality of 'comply or explain' disclosures in its annual corporate governance review later this year.

3 Senior managers and corporate criminal liability

As well as introducing the criminal offence of "failure to prevent fraud" for large organisations (covered in our January 2026 publication), the Economic Crime and Corporate Transparency Act 2023 ("**ECCTA**") established a new test which makes any company liable for economic crimes (e.g. bribery or fraud) committed by a senior manager. Under the Crime and Policing Act 2026 this test has now been broadened to catch all crimes with effect from 29 June 2026. In the past, under the "identification doctrine", it was only possible to attribute crimes to companies when they were committed by those representing the "directing mind and will" of the company (typically someone at board level). Now, if a senior manager of a company commits any crime while acting within their actual or apparent scope of authority, the company itself can be held criminally liable too. There is no specific statutory defence (e.g. having in place adequate or reasonable procedures), and no official Government guidance on how to mitigate corporate liability risk.

The test fills gaps left by existing statutory corporate criminal offences (such as the failure to prevent bribery or fraud) and will make it much easier to prosecute companies for a broader range of offences, including modern slavery, gross negligence manslaughter, data protection or computer misuse offences. Law enforcement agencies will undoubtedly be keen to find uses for the test, making the pursuit of all kinds of organisations much more likely.

Companies will need to draw on compliance best practice to protect themselves. A prudent step would be for companies to broaden their risk assessment exercises to ensure they fully understand the nature and scale of liability risk, and take effective steps to mitigate it.

4 Regulated firms: FCA oversight extends to misconduct beyond financial matters from 1 September

From 1 September 2026, the Financial Conduct Authority's ("**FCA**") non-financial misconduct ("**NFM**") rules, already familiar to banks, will apply to all non-banking firms within the Senior Managers and Certification Regime ("**SMCR**"). This is a significant expansion of regulatory oversight to include conduct that has traditionally either been thought to fall outside workplace consequences, or sat within the remit of employment law. A summary of the key changes follows:

- **Scope of the new rule:** A new rule[1] will bring serious work-related NFM such as bullying, harassment (including sexual harassment) and violence, within the scope of the FCA's Code of Conduct sourcebook ("**COCON**") for non-banking SMCR firms. Importantly, COCON will apply wherever there is a sufficient connection to the individual's role, even where the conduct itself falls outside the firm's regulated activities. Purely private conduct with no work-related connection, and minor workplace friction, remain outside the scope. The rule is not retrospective – firms do not need to revisit past conduct rule breach determinations or revise historic fitness and propriety assessments.
- **Who is affected:** The rule applies to all conduct rules staff, a broad category encompassing Senior Management Function ("**SMF**") holders, certification employees, board directors and most other employees of an SMCR firm. The potentially relevant subjects of NFM (i.e., those who may be harmed) are broadly defined to include direct employees, individuals performing functions for or providing services to the firm or its group, and employees of the firm's service providers.
- **Fitness and propriety:** NFM will additionally engage the FCA's fit and proper ("**FIT**") test, which casts a wider net than COCON. Assessment of whether an individual remains fit and proper to perform their role can, and should, consider any relevant conduct, including conduct in their private life. Even where NFM falls outside COCON, firms must still consider whether that conduct affects the individual's FIT assessment, and whether they can continue to hold an approved, senior manager or certified role.
- **New notification and regulatory reference obligations:** From 1 September 2026, firms must notify the FCA when formal disciplinary action is taken against conduct rules staff for a NFM COCON breach, or where an individual's fitness and propriety assessment has been affected. Regulatory references when an individual moves to another SMCR firm must also capture NFM-related findings.
- **Senior Manager accountability:** The FCA expects Senior Managers to take reasonable steps to prevent NFM, and failure to do so, for example by not intervening where the manager knew or ought to have known about misconduct, or by failing to operate relevant policies and controls, may itself breach Individual Conduct Rule 2 (due skill, care and diligence).

Firms with mixed businesses conducting FCA-regulated activities alongside non-regulated activities (e.g. a financial advisory firm with a technology or consulting arm) face particular challenges relating to the scope of the new rules and should seek tailored advice.

5 New proposed EU/UK merger guidelines

In the last few months both the European Commission ("**EC**") and the Competition & Markets Authority ("**CMA**") in the UK have published consultations relating to the way they will assess efficiencies in merger reviews. To date, mergers have generally been regarded by regulators as neutral or bad, but there is now greater recognition that some mergers can actually be beneficial. This is positive news for deal-making, but if both sets of revised guidance are adopted, it remains to be seen how this new approach will play out in practice.

At the end of April 2026, the EC published draft new merger guidelines ("**Guidelines**") for consultation, which is intended to replace guidance currently over 20 years old and codify several years of decisional practice by the EC and EU courts. The most significant development is the explicit recognition that mergers can be pro-competitive. The draft Guidelines

encourage companies to articulate and substantiate a "theory of benefit" explaining how merger-specific efficiencies enhance or maintain effective competition to benefit consumers, thereby offsetting any potential harm to consumers which may otherwise arise. The draft Guidelines also acknowledge that factors such as scale, resilience and sustainability may in some situations lead to verifiable, merger-specific benefits.

In a similar vein, more recently in June 2026, the CMA published draft guidance for consultation regarding its proposed updated approach to assessing merger efficiencies. Unlike the EC, the CMA does not intend to replace its existing guidance but merely update its Merger Assessment Guidelines insofar as they relate to efficiencies.

In many respects the approach and analytical frameworks of the EC and the CMA are similar – even if the process and some of the taxonomy differs. Whether before the EC or the CMA (and often both regulators at the same time), in order to advance pro-competitive arguments, merging parties will need to present robust evidence to support any efficiency claims. It will be key to show that any efficiencies are verifiable, merger-specific, and benefit consumers. Historically, whilst it has always been possible to argue that a merger would lead to efficiencies, the bar for proving them was so high that arguments tended to be underdeveloped. Now, the new approach from both the EC and the CMA may encourage merging parties to spend substantial time and effort in developing these arguments at an early stage, in order to have the best chance of convincing a regulator that a merger is indeed pro-competitive.

The EC consultation runs until 26 June 2026, with publication of the final text targeted for 1 November 2026 and formal adoption by 1 December 2027. The CMA's consultation runs until 1 July 2026, and we expect the new guidance will be adopted towards the end of the year.

6 What audit committees want directors to understand

The Institute of Chartered Accountants in England and Wales ("**ICAEW**") published a practical guide highlighting key areas where audit committees have particular expectations of their fellow board members, including understanding the operation of the external audit process as well as the growing importance of non-financial reporting and risk management.

Whilst the audit committee provides oversight of financial reporting as well as external and internal audit, this is crucially distinct from management's responsibility to prepare the actual financial statements. Despite the expectation set out in the Code that at least one board member should have recent and relevant financial experience, this guidance emphasises that this should only be seen as a minimum; all board members need to maintain a baseline understanding to ensure active engagement with financial matters.

Beyond this baseline financial literacy, the ICAEW guidance identifies a number of specific competencies that all directors should develop in relation to the external audit process. The guidance places particular emphasis on the capacity for constructive challenge: directors are expected to engage critically with both the audit process and its outputs, asking probing questions of management and auditors alike and actively engaging with audit findings rather than treating them as documents to be filed away. A working understanding of audit materiality, i.e., the threshold above which a misstatement may be considered sufficiently significant to influence the decisions of users of the financial statements, is also expected. Technology continues to transform the audit process by enabling broader testing coverage, more effective anomaly detection and deeper business insight, the guide stresses that directors should be sufficiently informed to assess how their auditors are deploying these tools to enhance audit quality, not merely to reduce costs. See item [7] of this publication for details on the FRC's recently published guidance on the use of AI in audit.

Sustainability reporting is another area in which the ICAEW guidance expects directors to develop meaningful fluency. Audit committees are generally responsible for overseeing sustainability reporting and assurance, and the guide notes that audit committee chairs and finance directors themselves rank assurance over non-financial risks as one of the top 3 factors enhancing corporate information value, therefore underscoring the expectation that directors must engage substantively with this area rather than simply be aware of it.

The UK is in the final stages of endorsing the UK Sustainability Reporting Standards ("**UK SRS**"), which are tailored versions of the International Sustainability Standards Board's inaugural sustainability standards (IFRS S1 and IFRS S2). Following the consultation held by the FCA earlier this year on transitioning listed companies to the UK SRS, it is proposing to implement mandatory climate reporting (UK SRS S2) for accounting periods beginning on or after 1 January 2027, with non-climate disclosures (UK SRS S1) and Scope 3 emissions on a 'comply or explain' basis during extended transition periods. With mandatory requirements now on a defined timetable, this is not merely an area to monitor: directors should be actively engaging with their company's state of preparedness, including the governance arrangements, data infrastructure and assurance frameworks that will need to be in place ahead of the relevant deadlines.

7 Using generative / agentic AI in audit – FRC identifies risks and mitigation

The FRC published its Guidance on the Use of Generative and Agentic Artificial Intelligence, making it one of the first audit regulators globally to issue dedicated guidance on this topic. Although the guidance is directed primarily at the technical teams within audit firms who are responsible for designing and deploying AI tools, its implications are directly relevant to audit committees and to GCs and CoSecs who may serve as points of contact with a company's external auditor.

The FRC considers that generative and agentic AI tools have the potential to significantly enhance audit quality, but identifies three categories of risk that companies must address: (i) deficient AI output; (ii) the misuse of an otherwise appropriate output; and (iii) a methodology that fails to comply with auditing standards even where the output itself is sound.

The guidance prescribes four categories of mitigation: (i) appropriate system design; (ii) a robust tool certification process; (iii) staff education and governance; and (iv) "human-in-the-loop" oversight of outputs. Companies are expected to monitor tool performance on an ongoing basis, including in relation to output quality, patterns of failure and any unexpected behaviours.

The FRC's guidance does not impose direct obligations on companies and at this point only aims to codify emerging good practice. However, as audit firms adopt AI tools at pace, the procedures applied to a company's audit may change materially, including in areas as significant as the review of board minutes and the testing of revenue contracts. Audit committees should engage with their external auditor to understand which AI tools are being deployed on their audit, how those tools have been certified, and what human oversight is being applied to their outputs.

8 Incoming EU AI and cybersecurity regulation with extraterritorial reach

New AI regulatory and cybersecurity laws are coming into force. These laws will have a significant effect on how businesses develop, license, and use technology in almost any context – especially given the substantial penalties for non-compliance, these should promptly be brought to the attention of boards.

The EU AI Act ("**AIA**"), which came into force in August 2024, is designed to regulate the development and use of AI. Its definitions are broad and capture many automated technologies that would not ordinarily be considered "AI". The rules on high-risk AI systems (which have the greatest impact on most businesses) are expected to be enforced from 2 December 2027. Whilst the AIA is most directly relevant to companies operating in the EU, it has expansive extraterritorial scope and applies to companies operating outside the EEA in many circumstances. Maximum penalties for non-compliance are the greater of €35 million or 7% of worldwide turnover. For guidance and practical insight on the AIA, see our EU AI Act Handbook.

The Network and Information Systems Directive 2 ("**NIS 2**") is an EU cybersecurity directive that applies to a wide range of service providers across multiple sectors. As a directive, it must be transposed into national law in each EU Member State. To date, around three quarters of Member States have done so, therefore businesses operating in those jurisdictions have already been exposed to enforcement action. Whilst NIS 2 is most relevant to companies operating in the EU, it has explicit extraterritorial scope – companies providing services into the EU will in many cases be caught in scope, and non-compliant companies face the risk of parallel enforcement across multiple Member States simultaneously given its implementation at the national level. Maximum penalties are the greater of €10 million or 2% of worldwide turnover. NIS 2 also introduces extensive investigative and enforcement powers for regulators (e.g. powers to conduct audits and inspections, compel disclosure of information, etc.) and, notably, establishes personal liability for senior management in certain circumstances.

The Cyber Resilience Act ("**CRA**") regulates the placement on the EU market of products with digital elements, which includes hardware, software, standalone applications, consumer IoT devices and enterprise security systems, among others. It applies to manufacturers, importers and distributors of such products, regardless of where they are based, provided they are placing these products on the EU market. The majority of its requirements come into effect by 11 December 2027, with maximum penalties of the greater of €15 million or 2.5% of worldwide turnover.

Companies are advised to conduct an early assessment of whether their business falls within the scope of any or all of these frameworks, given the breadth of their definitions and their extraterritorial reach. Visit White & Case's regulatory tracker AI Watch for a detailed overview of AI laws around the world.

9 Voluntary Cyber Resilience Pledge

Against the background of hostile cyber activity that is becoming increasingly prevalent, intense and sophisticated, the Government has introduced a voluntary Cyber Resilience Pledge intended to serve as a practical way for organisations to boost their resilience to cyber attacks and differentiate themselves from their competitors.

An organisation signing the pledge is committing to:

- implement all actions within the Cyber Governance Code of Practice;
- ensure all board members undertake the National Cyber Security Centre's ("**NCSC**") Cyber Governance Training annually;
- register for the NCSC's Early Warning service;
- incorporate the NCSC's Cyber Essentials standards of cyber security into its audit and supply chain verification process (including registering to the Supplier Check Tool); and
- publish the signed pledge declaration on its website.

Directors, chairs and/or CEOs interested to sign the Pledge on behalf of their organisations should return the signed declaration to the DSIT Cyber Security team at cybersecurity@dsit.gov.uk.

10 Ethnic diversity of boards and senior management – meaningful progress but decline in "Black Representation"

The Parker Review Committee published its 2026 annual report, which included the results of its latest survey on the ethnic diversity of boards and senior management of FTSE 350 companies and large private companies. Although headline figures represent meaningful progress at the aggregate level, the report notes that this progress is unevenly distributed and that in one critical respect, the trend has even gone into reverse.

Key findings from the report include:

- **FTSE 100 milestones:** 98% of FTSE 100 companies met the "One by 2021" target. Furthermore, ethnic minority directors now hold 20% of all FTSE 100 board positions (the highest proportion recorded since the review began).
- **FTSE 250 progress:** 82% met the target of having at least one ethnic minority director. Ethnic minority

directors now account for 16% of all director positions in the FTSE 250.

- **The "Black Representation" gap:** Despite the overall upward trend, the unfortunate exception observed is that Black representation at both the board and senior management level has declined. Black directors currently hold just 2.3% of FTSE 100 directorships, falling further behind their share of the working-age population.
- **Senior leadership:** Ethnic minority individuals represent 11% of UK-based senior management in the FTSE 100, and 10% in the FTSE 250 and large private companies – pipeline diversity below board level remains an ongoing challenge and something which demands specific attention.

For GCs and CoSecs, the report raises three concrete areas for attention. Firstly, with the December 2027 senior management diversity target deadline now only 18 months away, companies should check whether they have set, and publicly disclosed, a target for ethnic minority representation in their senior management. Secondly, companies should review whether their annual report diversity disclosures break down ethnic minority representation by group rather than in aggregate – the Report's findings make clear that aggregate figures can actively obscure deterioration in Black representation specifically. Finally, and relatedly, companies should consider whether their board diversity policies and nomination committee processes are designed to identify and address group-specific pipeline gaps, rather than simply monitor overall ethnic minority headcount.

Other emerging issues to keep on your radar:

1. A shift in corporate criminal enforcement

Before the end of 2026, it is likely that a new Director will be appointed to lead the Serious Fraud Office, leading to a potential shift in the way the agency approaches enforcement. At the same time, further developments are likely on significant issues including the financial incentivisation of whistleblowers, the nature of cross-border law enforcement cooperation, and reform of the criminal courts to reduce the availability of jury trials. Overall, this points towards a further evolving enforcement landscape throughout the rest of 2026 and beyond, making robust, risk-based compliance more important than ever.

2. Mandatory ethnicity and disability pay gap reporting

The Government has recently set out the response to its April 2025 consultation on pay gap reporting, confirming that ethnicity and disability pay gap reporting will be made mandatory for employers with 250 or more employees. Draft clauses have also been published for inclusion in the Equality Act 2010, developed with input from businesses that have been reporting on a voluntary basis. Under the proposed framework, employers will be required to report on: (i) a binary comparison of pay between white and all other ethnic groups, supplemented by data across 5 broader ethnic groupings where minimum employee thresholds (yet to be determined) are met; (ii) a binary comparison between disabled and non-disabled employees using the definition of "disability" set out in the Equality Act 2010; and (iii) workforce composition data by ethnicity and disability. No implementation timetable has been provided at this stage.

White & Case UK Corporate Actions and Governance

Our UK Corporate Actions and Governance (CAG) team advises UK public and private companies outside their transaction cycles on their ongoing legal affairs, with extensive experience handling continuing obligations, corporate advisory and governance issues.

The CAG team has extensive experience in advising on complex, technical, multijurisdictional corporate advisory matters, including intra group reorganisations, returns of capital, demergers and joint ventures. The team also advises on listed company disclosure obligations, the implementation and operation of governance structures for corporates as well as different forms of unincorporated organisations in different jurisdictions.

The team is often called upon by companies to provide direct advice to their boards as and when needed and works hand in hand with the firm's market leading activism practice. The team works closely with the firm's wider international listed companies practice to ensure truly global coverage.

In addition to providing support to GCs and their legal teams, we also advise company secretaries and their secretariats on company secretarial matters and provide support directly to non-legal functions (e.g. finance and compliance and governance teams). We have successfully advised a wide range of clients, including newly-listed, mature, FTSE 100, small cap and global companies.

Please contact any member of our CAG team for any questions or queries and to see how they can assist.

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