Zoom out

How to manage the new risk landscape

WALKER MORRIS

Introduction

It didn't surprise me at all to see a full room for our event last month - 'Zoom Out: how to manage the new risk landscape'.

I know from speaking to clients that risk has never been higher on the agenda. Keeping up with the threats posed by our changing society, increasing regulation, political turmoil - it's not easy.

But the world conspires to keep us on our toes.

If you look at any publication examining businesses' perceived number one risk, data and cyber breach come out on top. In fact, over 90% of the people attending our event ranked it as one of their top three risks in our own risk survey. Even 10 years ago, who would have thought that would be the case? It makes me wonder what will be top of the risk tree in another 10 years.

The more immediate focus of many businesses, of course, is Brexit, which continues to dominate the media headlines. Yet interestingly, whilst 70% of our attendees ranked Brexit as one of their top risks, both in terms of likelihood and impact, only a third of attendees had a strategy to deal with it. Symptomatic perhaps of the level of uncertainty businesses are facing and lack of clear guidance from Government.

I was thrilled to take part in a panel discussion on the day debating the GC's role in risk management. The message coming through loud and clear was 'get involved'. You can add real value to your business by helping it break out of silos, by scanning the horizon, by showing the business that 'this could happen to us'. The discussion is detailed in this document.

Two other members of our panel are featured in this document. Judith Pike, one of our real estate partners, spoke to Janet Freeman, Senior European Counsel at Precision Castparts, about ensuring legal isn't seen as the 'business prevention team'. Victoria Bradley, a Director in our Energy Infrastructure & Government team, spoke to Paul Smith, Chief Executive at Morses Club plc, about how our changing society is driving new risk.

Lastly, Simon Cuerden, our key note speaker from Deloitte, spoke to Jeanette Burgess, our Head of Regulatory, about the importance of understanding your business when looking at risk.

If you were unable to attend our event, don't worry. In this document we've summarised the top take-away tips from the sessions to offer some practical guidance and advice. Of course, you can always visit our #WMRiskSeries on our website for regular risk related briefings:

www.walkermorris.co.uk/publications/wm-risk-series/

Malcolm Simpson
Managing Partner

Prioritising Risk

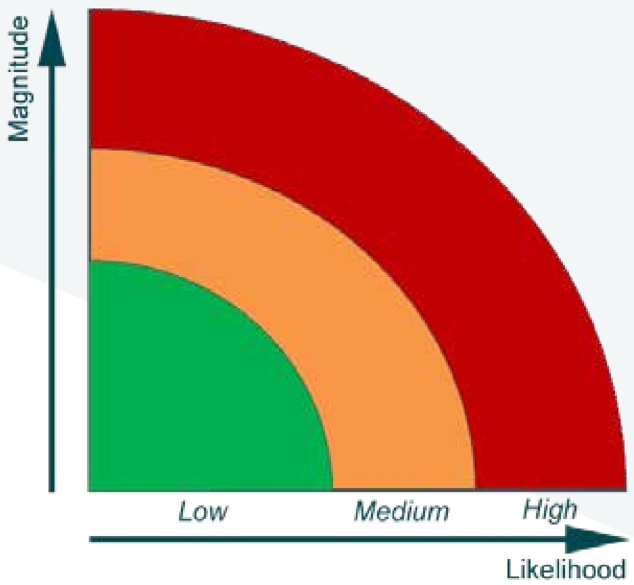
One thing that became clear during the event was that those managing risk have their work cut out. Where do you even start? Stuart Ponting gives advice on prioritising risk and identifying weak spots

It isn't possible to manage every risk, all of the time. You need to find a way to focus what resource you have where it matters most. We set out two tools here.

Prioritising your risks

This simple prioritisation tool helps identify the most important risks.

- Define your risk
- Assess the likelihood of it occurring
- Assess the magnitude of impact
- Look at where that plots the risk



It's safe to say that we should all be focussing on those in the top right hand corner.

And then applying our time, money and worry accordingly.

It's simple but effective.

Finding your weak spots

Who knows your organisation best? Its people.

Your employees know your products, processes and systems intimately, and how they work in the real world. Generally, however, they use that knowledge for good.

Ask your employees to become temporarily bad guys. Ask them to turn their knowledge against the organisation. If they wanted to damage the organisation, where would they start?

Where could and would they cause the most damage?

Ask teams to cook up schemes that employees could carry out, that outsiders could use.

You could even just do it yourself. Ask yourself - if you wanted to damage your own organisation, where would you start?

Some organisations bring in outsiders to test vulnerabilities, and that can be useful. But don't ignore the insight of a internal assassin!

Corporate Crime and Investigations

Mastering Key Skills

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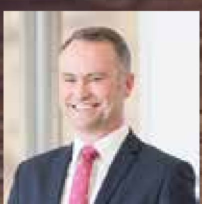

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Q&A

Jeanette Burgess, Partner & Head of Regulatory at Walker Morris, and Simon Cuerden, Partner and Head of Crisis & Resilience at Deloitte, discuss why risk is moving up the agenda.

Jeanette: It's good to talk to you Simon. We're asking all our interviewees the same first question - why do you think risk is moving up the agenda?

Simon: Risk is not in itself inappropriate for business, as long as it is planned for. As long as businesses plan appropriately, risk can drive growth. The challenge now is visibility: 24-hour media means that risks and their impact can stay in the public eye for a very, very long time. It's now so easy to rake up old news. Even healthy businesses can fall foul of that.

Jeanette: That's true. I remember being over in Chicago in the aftermath of the BP oil spill. I was really surprised with the ferocity of some of the coverage.

Simon: With any high impact or crisis event, the scrutiny and media glare can be significant and, if anything, is intensifying and expanding.

Jeanette: You're right. I see a huge difference in how business are dealt with now. We saw Tesco Bank fined £16m for a data breach recently. 10 years ago, that would have been a few thousand pounds and a slap on the wrist.

But do you think that the increase in financial sanctions is making a difference? Granted, the businesses I see are generally pretty good now at documenting risk matrices and collecting information, but I still don't see much thought on how one part of a business impinges on another.

> *"The challenge now is visibility: 24-hour media means that risks and their impact can stay in the public eye for a very, very long time."*

Simon: There is a positive trend but I'd like to see businesses think more deeply about risk and resilience. Risk is often managed through a documented process, but the implications of that risk, and what it might mean for the business if not properly addressed, aren't always fully appreciated.

The emphasis should not be about simply recording the risk, but understanding why it exists and its implications.

Some sectors though, financial services for example, are further advanced in building a more holistic approach to risk and compliance.

Jeanette: Financial services, and I'm very familiar with that sector, may be better at it because of the myriad of different requirements they have to deal with. The FSA handbook, regulations - they've really no option other than to be on top of it.

Do you still see organisations at the other end of the spectrum with a bit of a 'this will never happen to us' mentality?

Simon: About 10 years ago, I sat in the boardroom of a business that had concerns that it had misled the market on a financial matter. A comment from the Board was 'do we really need to do anything about this?' I'd be surprised to hear that now.

The risk landscape is getting bigger and broader, and the people that attack organisations are getting smarter and smarter. The challenge of risk management is not about 'this will never happen to us', it's about how you continue to evolve your risk management apace, so that you are responding to and anticipating the risk that might be out there.

Jeanette: I think it's also a cultural issue. Too often in the past, compliance has been about telling people what to do, but not, as you said earlier, explaining why they need to do it. That's evolving slowly but the right training is really important to get buy-in and build the right culture. Get people thinking and talking about risk. Trade associations are really useful. If you listen to people that you know in the industry, and that you respect, it can really bring it home that ‘there but for the grace of God go any of us’.

Moving on Simon, a specific risk we need to mention - Brexit. Do you see business tackling it yet?

Simon: As we sit here in mid-October, this is a fluid situation. Some of my colleagues are dealing with scene setting, helping clients with decisions on, for instance, setting up subsidiaries, or the management of staff. All the issues that come along when you’re thinking about setting up a new business.

We also have clients, though, who are advanced in thinking about how they address the Brexit risks themselves. Financial services, again, are further ahead - perhaps because their issues and solutions are more identifiable.

There will be mixed levels of sophistication. I’d like to think that most clients understand what their key risks are in a no deal scenario, and how they might effectively get through any short term issues, for example, stockpiling. But it’s very hard to plan properly for all options. Businesses are saying: “We need to know what we’ll be facing”.

Jeanette: It is hard. I’ve still been surprised, though, by the lack of questions from clients.

I was discussing this recently with one of our corporate partners. We were both surprised how many clients in the manufacturing or services sectors, with a significant European presence or trading partners, are seemingly pursuing business as usual. Now, it may be that they’re taking steps behind the scenes, but they’re certainly not proactively seeking advice. I suspect that it’s your point, Simon, that the position changes every day. If people gave their full attention to this, they wouldn’t get anything else done.

I do suspect, though, that the moment we get some certainty, we’ll both be deluged with queries as to what it means on a practical basis.

Simon: I suspect that when that certainty comes, we’ll see a dramatic acceleration. By the time we do get certainty though, it is inevitable that not every business’ thinking will be as fully developed as it needs to be. Particularly if there is a prospect of no deal, we’ll probably see a need for organisations to free people up, and reach outside their own organisation for support.

UK business is very good at responding when it knows the situation that it faces. Right now, it’s just too uncertain to plan for everything.

Jeanette: Ok I think that’s enough Brexit talk, Simon. What one piece of advice would you give to our readers?

Simon: In risk management, the absolute fundamental to me is to understand what your business strategy is and what risks exist around that strategy. You need to be able to understand and size risks in terms of their impact, and have a wide risk management framework to address it, not in a silo but across the business as a whole.

If, then, a risk manifests itself in an event or series of events, make sure that you have the right processes embedded. You need to be able to respond to that risk, whilst maintaining business as usual.

Jeanette: I agree with that. Risk management has to be practical. Don’t think about risk as a nebulous concept, talked about in sound bites, managed through risk matrices and only talked about on the Board Minutes. Whether it relates to a call centre dispensing mortgage advice, or a factory making widgets, risk management has to work for your business.

If you want to understand risk, by all means get out the risk matrices. But go and spend time talking to people. Find out what’s going on so you can identify those day to day risks - which I guarantee will be divorced to some extent from the reality of what the policy and procedures provide for.

Risk management - it’s not a destination. Nobody gets there. It’s a journey which we’re all in together. Make it human, make it real, make it meaningful. To quote Churchill, ‘success is not final but failure is not fatal, it’s the ability to keep going that counts’.

> *“The risk landscape is getting bigger and broader, and the people that attack organisations are getting smarter and smarter and smarter. The challenge of risk management is not about ‘this will never happen to us’, it’s about how you continue to evolve your risk management apace, so that you are responding to and anticipating the risk that might be out there.”*

Are you ready for the future HR challenges that Brexit will bring?

Current political uncertainty makes planning difficult, but our checklist will help you to be as prepared as possible.
Contact us for your free copy.

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Q&A

Judith Pike and Janet Freeman

> *Companies need to identify, assess and mitigate risk across the business, including those that impact each other - and I think they can do that by allowing their legal teams to be integrated*

Judith Pike, Real Estate Partner, Walker Morris: So Janet, it seems that risk management has never been higher on the agenda? Why do you think that is?

Janet Freeman, Senior European Counsel, Precision Castparts: We're living in times of increased regulation. In every area in which we work we now have the need for transparency to comply with new regulations all the time. Boards, particularly global group boards, are recognising that risk has to be managed from the top for it to flow through the organisation.

Judith: So how do Boards do that? You mentioned to me earlier about how integrated into the business you are. Does that help the business, the Board, see the bigger picture?

Janet: Companies need to identify, assess and mitigate risk across the business functions, including those that impact each other - and I think they can do that by allowing their legal teams to be integrated.

There are two key areas of risk in my mind. We've got what I call protective risk. These are your risks that lead to costs and losses, so safety issues, compliance issues, that kind of thing. You've then got value added risk, where you're looking at different strategies to manage what may go wrong.

If businesses can allow their GCs and legal teams to be persuasive, as opposed to seeing legal as a veto role - a protectionist role - they will see the benefits and be more resilient in the face of possible adverse events.

Judith: So not keeping legal in a 'business prevention officer' box?

Janet: Yes, and I do think that identity is changing. I don't think we're there yet, but it's certainly no longer "legal says no". I think it's "legal asks how are we going to do this".

Judith: And do you think it's your role to point out new risks to the business, and to challenge them if it seems there's complacency?

Janet: Yes, and I think one of the best ways to show that something adverse can happen is to actually show that it can happen. We - probably more regularly than any of us know - implement phishing exercises. We send emails to our people, we set cyber traps and see how many people fall into them. We don't call anybody out, we don't say "hey, you guys you didn't do this", but we know where we're failing. We can then address that.

Judith: So one thing we're fairly certain *will* happen is Brexit, but, in our experience, some businesses still aren't really thinking about it in any great detail. Do you think the uncertainty is still too great?

Janet: I think preparing for Brexit is just an enormously difficult exercise and one that businesses can't fully prepare for because it's not possible yet. People are starting to think about the possibility of no deal, but they aren't preparing for a deal because we just don't know what that deal is.

Judith: Lastly, what one piece of advice would you give to our readers?

Janet: As a GC or a Senior Counsel, be part of your business. Don't be a firefighter, be a facilitator. Force yourself into that effective position, be persuasive, because that way you will manage risk with people on your side.

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Panel Discussion

The last session of the day was a panel discussion. The panel explored the role of lawyers and legal teams in managing risk.

Georgina Stanley, Editor of Legal 500 Chaired the panel which comprised: Simon Hardcastle, General Counsel at Endless, Janet Freeman, Senior European Counsel at Precision Castparts, Sarah Barrett-Vane, Legal Operations Consultant at SBV Consulting, Paul Smith, Chief Executive Office at Morses Club plc and Malcolm Simpson, Managing Partner at Walker Morris.

Georgina: What's great about today's panel is that each member comes at risk from a different angle, so you'll get different perspectives - a 360 degree view.

Simon, you bring two perspectives. You're a GC, but, coming from Endless, you also look at risk as an investor. What are the things you've seen in your due diligence exercises that are the big no-nos? Where can things go wrong?

Simon: Endless is a turnaround investor, so we're often introduced to businesses which are under-invested, in terms of capital and processes, and we're often working to a very short timescale. I sit alongside the investment team, who look at financial risk, operational risk, market risk. I focus on the legal risk in any transaction.

We always get an external counsel to do the standard legal due diligence, identifying the risks we can deal with quickly. It might be, for example, that the organisation has a workforce that's mainly self-employed rather than employed, which could cause HR problems. It might be, if it's a business heavily based on contracting, we need to analyse any concerns there.

The harder bit, where I spend more of my time, is on operational legal risks. So for us, we're interested in things like how a business identifies anti-bribery risk, cyber risk, sanctions and AML compliance and general corporate governance. Most businesses have a nice piece of paper setting out the policy, but we're more interested in how it's applied in practice. My time is spent understanding how that risk, culturally, is embedded or managed within the business.

Georgina: And if the business doesn't have those policies in place, or isn't actually putting them into practice, would that be an absolute 'no' for you?

Simon: We know it's a journey, with the starting point being 'we've got a policy'. If we can tick the boxes all the way to the end of that journey, which is you've got a policy, people are trained on it, they understand it, it's culturally embedded - great. But sometimes we're further towards one end than the other.

As investors, we have to look beyond the pure finances of the deal. We've got real reputational issues at stake if something isn't right. We've also got potential liability for the directors that sit on the Board of these companies. So for us, it's those things which cause more concern.

Georgina: Janet, from your perspective, what do you see the role of the GC being in terms of risk management?

Janet: You're dealing with such a broad spectrum. There's inherent risk in every aspect of your business - you can't stop that and you can't be in control of all elements of it.

But what I've seen from the US is that GCs are entrenched in the business. They are on the board, the Board are asking Counsel for advice. The clue's there, it's in their title. Our role is to get heavily involved in decision-making at the start. Be part of the commercial teams within the business.

> *"My time is spent understanding how that risk, culturally, is embedded or managed within the business."*

For example, look at the holiday pay changes that affected a lot of employers over the last couple of years. Instead of just asking "do we have to pay this" and "what is it going to cost", let's look at what else is involved. Can we change shift patterns? Can we change the way we do business? Can we consult with the Unions and change the agreements that go with the actions? Can we get something out to make a change in this law? We can be at the start of the decision-making process and manage that risk - but we have to pick those areas.

Georgina: And are you involved in identifying new risks?

Janet: Yes, and I think that's critical. In the business I'm in, we've gradually moved from the old style European model of legal. So the tide is changing. People come to the legal team now and say "this is what we want to do", and our first question is always "what's your objective". Let's start with your end game and let's find a way to get you there. You might not get to 100%, you might get to 99%, but let's start with your objective and work backwards.

Georgina: What obstacles do you face in terms of risk management? What are the things you find most difficult?

Janet: People! Human nature is an inherent risk in everything we do. People generally think that they know what they're doing. As in-house lawyers, we get that antennae that says "I know this but I don't know enough, I need to go somewhere else" A good in-house lawyer knows where their own boundaries are and when someone else needs to come in to help.

Georgina: Sarah, you've managed legal operations within really big organisations. What can people like Janet and Simon do to make their life easier? How can they fit risk management into their day jobs and get on with everything else as well?

Sarah Barrett-Vane: The way that someone from the operations world comes at this question is simply this - what is all the work you've got on your plate, and how does it get done?

I've listened to all the sessions today, and there was a part of every single one - be it GDPR, tax, contracts - that could be unbundled and put back together again. I don't get involved in any legal discussions per se - that's for the GC. My role is to look at each element of work and think about who or what should do it. Could it be

> *Human nature is the inherent risk in everything we do. People generally think that they know what they're doing.*

driven by process? Could it be outsourced? I don't think technology is always the answer, but can tech help?

Think about a triangle. The strategic work sits at the top, and you'll have your high-end lawyers doing that. A big swathe of business-as-usual sits in the middle, which will probably be a mix of in-house and outsourced. And then you've got your volume and commoditised work at the bottom. That could be process-driven, it could be done by an alternative provider, it could be done by tech.

Without a doubt, at least a quarter of the work you've all got on your plate could be done more efficiently and effectively - and more cheaply, if that matters to you. It's just working differently, thinking differently. Push up what needs to be pushed up - if it's high risk, it's at the top of the triangle. But if it's low risk, push it down, deal with it differently.

Georgina: Do you think all companies would benefit from having someone looking at legal operations?

Sarah: It differs. And it's not just about the size of the company, it's the complexity of the company.

If you're a massive company that has big spend, big people, big problems then yes, having someone to help you unbundle that, build it up again and outsource it to all sorts of different places makes sense. But if you're a smaller company which is complex, or if you're an organisation going through transition, then you could also benefit. Some start-ups are hiring operations people because they want to get it right from the start.

Georgina: Paul, you don't have an in-house legal team. What help do you need with managing business risk?

Paul: People have different perspectives or the role of the Chief Executive. For me, it's a role of assessing risk, leading the team in mitigating that risk, deciding what the business' appetite for risk is post-mitigation, and then translating that into opportunity.

Risk for us, and for many modern organisations, falls into two categories. You've got traditional risk, which everybody will recognise. So the risk of competition, fitness for purpose of resources and channels, technology - be that evolutionary, be that disruptive or be it completely re-defining.

But we're in a new age of risk that lawyers need to engage with. The new risk is politically-influenced pressure and the associated groups that form a neat queue behind those initiatives, galvanising social and traditional media to use as a very powerful tool against commercial organisations.

This puts us in a new regulatory environment, so the role of lawyers becomes critical. What we seek from you is a real narrowing of focus. Where is the risk, taking into account that very broad spectrum of traditional and new age factors? Without that concentrated and confident advice, based on superior knowledge of all of those linking parts, it's very difficult to get true value from General Counsel.

Georgina: And Malcolm, is that something you see more of? Do your clients want you to come off the fence?

Malcolm: Yes, definitely. We're not there to make your decisions, but we have to work with our clients and guide them to make the decisions that are right for them.

As Janet said earlier, the range of topics covered today has shown that risk crops up in almost every aspect of your daily lives, and it's so important to look at the big picture. I had an example crop up yesterday around supply chain, which covers such a broad area within any business, and is a risk to both operations and cash. These are critical situations to gather the whole team together, internally and externally - lawyers, operational teams, and the regulatory team in some circumstances.

Georgina: Janet, I'd be really interested to hear your perspective on the kind of gaps in knowledge that you think everyone could benefit from.

Janet: I think lawyers are probably quite low down in the 'wanting to move into the tech age' chain. A lot of legal teams I know want the tech, but accepting that legal can move that way is harder. Understanding the legal solutions that are available would be a good start.

Simon: I was interested in Sarah's approach. I'm a team of one, and have 30 deal executives to try and manage. To step back and ask "where should I be spending my time and where should I be adding value" is a really good discipline. It is important to acknowledge that there are smaller risks that they could be managed differently.

Janet: I work in a very decentralised business. We've got some 30 companies across Europe, all run by their own board, each with a corporate head. However, we're a centralised legal team, and any solutions that would bring consistency would be really, really helpful.

Georgina: What's the starting point then Sarah?

> *"Clients need to force the change for everyone's benefit."*

Sarah: It depends on your priorities. If you're a data-driven business, GDPR could be huge. If you're a manufacturing company, you could be massively concerned about contracts.

In fact, almost every company, when they look at their risk portfolio, say that they're contractually heavy. However, lots also say "We don't know who we're contracted to or where the signed contracts are". Companies don't know when contracts expire, what the termination provisions are, what the RPI clauses are. We don't know what we're supposed to get paid, or if we're entitled to any money back. For me, that's crying out for automation.

So start with a contract management system. There are big systems out there, but you can start with something tiny like a document management system. You don't need a whole technology road map. Start small and track your achievements.

Compliance has been talked about a lot today. The moment someone says compliance, I'm thinking 'is there an app for that'? Think about how you can clear the decks so that you can be at the top of the triangle, doing exciting stuff. Push things down to the right place. Is what I actually need a legal project manager? Or a paralegal?

If you're too small to invest in tech yourself, then get it done by a law firm. If your law firm isn't investing in tech enough, then lots of clients are making their law firms invest in AI and contract automation. I know that Walker Morris is doing it because I've spoken to them about it. Clients need to force the change for everyone's benefit.

Simon: Those types of systems are really important from our perspective, given the timescales we need to work to. Say we're looking at a retail business with a portfolio of 300 stores, we know that AI can operate quickly to analyse four or five key clauses in the leases. We can then use a human to look at the top ten sites, those that we really need to be on top of. That's the best blend. We can cover so much ground in a week, and we just couldn't do it as effectively if we were relying solely on humans.

But the key is to be very clear as to what output you're looking for. AI in itself is not a solution but it might help you get to the output you want.

Georgina: I think unfortunately our time has very much run out, but that was really, really interesting. I know that we probably could have kept going all evening, but thank you all very much.

How are companies managing risk?

69%

Think Brexit is a key risk

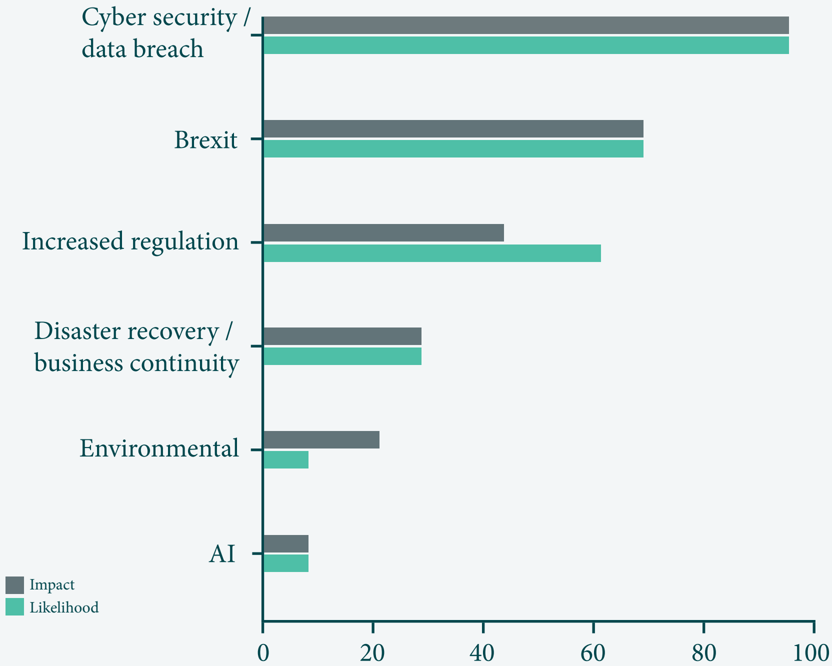
but ...

Only a third

have a strategy for managing that risk

3 *risks dominate*

In terms of both likelihood and impact, cyber breach, Brexit and increasing regulations are perceived as the biggest risks



67% *aren't yet sure of the risks and impacts*

33% believe it won't impact their business

Only 38% of respondent thought that risk management was given a high priority in their business

38% said medium

24% said low

Q&A

Victoria Bradley and Paul Smith

> *There are some really good people in the FCA at a senior level who are there to stop major risks materialising, and they shouldn't be overruled because of what the media might say.*

Victoria Bradley, Energy Infrastructure & Government Director, Walker Morris: The first question I have for you, Paul, is one that we're asking everyone. It seems that risk management has never been higher on the agenda, and I wondered why you thought that was.

Paul Smith, Chief Executive Officer, Morses Club plc: I think it's against the backdrop of the changing nature of politics. Historically, there has been credibility to politicians' opinions and where they base those opinions. They take a great deal of pride in basing what they say and what they think in the historical heartlands of their parties.

Today, we see less of what I'd call 'conviction politicians'. I think today's parties attract celebrities, pressure groups and charities to rally around their flag. They are extraordinarily good at leveraging social media and the media more broadly to exert tremendous influence, not only on governments and independent committees, but also on regulators, which we have seen result in societal change. We have seen social media change the face of political campaigning and the risk is that the general public consume social media facts as if they are all true, and will then go out and act on what they see and read. I think that that has really turned up the heat on the risk environment.

Victoria: It's true. I've seen a couple of deals where people who made very sensible decisions, based on sound, commercial judgements, find that they are backed into a corner by current popular ideas and the possibility of bad press.

Paul: In consumer credit, obviously, we're regulated by the FCA. The FCA pride themselves on their culture and outcomes-based approach, taking a thorough methodical approach to examining from the ground up the particular areas that they are focused on.

However, when you get a ground swell of opinion, senior politicians often can't help but react to it. In some cases, popular opinion overrules huge swathes of meticulous evidence gathered by the Regulator. There are some great people at the FCA whose job it is to stop major risks materialising and they shouldn't be put in a position where they are impeded in doing what is best because of pressure from the media.

Victoria: Do you think there's an upside to this environment, though? Are people more aware of what could go wrong?

Paul: In our organisation we spend a great deal of time on horizon scanning, whether it's looking at information given by the Financial Ombudsman Service or the FCA, or looking at examples of where errors have been made by other senior management teams that we can learn from.

For example, issues of cybersecurity are at the forefront of many business agendas in today's digital and commercial landscape and as you would expect, we're constantly reviewing our procedures and looking at lessons learned by other businesses to ensure we are best placed to manage this risk.

Victoria: So it's about communication?

Paul: Yes, it hits home with the executives in my field, particularly those who are statutory directors. We link it in with a lot of communication about the senior manager regime and the consequences of falling foul of those risks. We try to make people think about the consequences for them individually as directors.

Victoria: Some of the things we heard today that I think resonate with what you're saying were case studies, particularly those from Jeanette. They were those where you thought "yeah, that could easily happen". Particularly the vishing exercise - somebody ringing up pretending to be from the bank, speaking to lots of different people and persuading each to give one small piece of information. Then, lo and behold, they're in. Really interesting the way it works!

Paul: The root cause of mistakes is often the most shocking, because you think nobody would make that simple an error. But if you can put that into the context of a case study from a big organisation, it's easy to see how you can get duped.

Victoria: Paul, we need to address the B-word. Are businesses thinking about the risks presented by Brexit? Or are people a bit apathetic?

Paul: Our business is 100% domestic. We are not exposed to any currency fluctuations, and we draw our funding from organisations that are not exposed to too much Brexit-related turbulence. As a result, we're not dwelling too much on Brexit in boardroom discussions.

What we *are* doing, though, is looking at the availability of labour, post-Brexit. We're looking at some of our technology suppliers, which might provide HR systems hosted by EU-based organisations, or might host offshore.

Generally, I think that people are under-prepared because of the lack of certainty.

With so much uncertainty, it is very difficult to get a clear understanding about the impact on financial services. All any business can do is scenario plan and make sure they have considered the impact of all of the possible outcomes, however without more good quality information from Regulators and Governmental - and cross-party - sources, it remains difficult.

Victoria: I was talking on the day about the risk of increases in energy prices and wondering why it isn't an agenda item for most UK businesses yet. There is a real risk that we will find ourselves in a dual energy economy where businesses who have had the foresight to address the issue in advance and put their own energy solutions in place push prices up even further for those who haven't considered it (as they pay an increased percentage of these costs). So at what point does a business (which in a non-core business in terms of energy) start to put energy risk on its agenda?

Paul: I think it is important that energy risk is on any businesses agenda, largely due to the impact organisations have on the environment and secondly the cost associated with not only utilities, but fuel. For any large undertaking of over 250 people, or an annual turnover of in excess if c.£40 million, businesses are required to review their total energy consumption and complete an energy/ESOS assessment. This focuses the attention on the energy being used and the output of the assessment provides practical recommendations on how to reduce energy consumption. Having more fluid property requirements does impact the appetite to implement some of the longer term solutions but where it makes sense to implement the recommendations, both the business and the environment wins. I think that any SME Boards would consider making more changes if solutions were more affordable. Renewable energy and access to greener vehicles still comes at a premium, it would make sense for energy providers and industry to work together and tackle energy risk. Making Boards more accountable for energy usage, including making the recommendations from the assessment mandatory, would focus any Board's attention. The government should also have a closer look at Landlords and the impact they could have on energy usage.

Victoria: What one piece of advice would you give to the people reading this?

Paul: General Counsel and in-house lawyers are always going to face a particular topic where they need a sectoral or a vertical specialist. It's worth taking the time to find someone that puts a huge amount of work into understanding all the risks - old world and new world - facing your business, and who is confident enough to tailor their advice to your business's particular issues. 'Time spent in reconnaissance is seldom wasted', as they say in the armed forces - same goes for choosing lawyers.

Victoria: Thank you Paul, that's great. Is there anything else you would like to add?

Paul: Always wear sunscreen!

> *"I think that people are under-prepared because of the lack of certainty."*

Your risk management to-do list

Here's a reminder of some of our speaker's top tips.

Risk of opportunity - managing your contracts to add value

Do your supply contracts:

- Allow you to source from third parties should your supplier have any issues?
- Grant priority to you over other customers in the event of such issues?
- Allow you to terminate in the event that supply is disrupted for a specified period?
- Set out clear measures of success and failure, with remedies to guarantee performance?
- Enable you to transition to a new supplier with adequate support from your exiting supplier?

Are you:

- Aware of the weak links in your supply chain and the impact they could have?
- Up-to-date on market conditions, industry insights, and anticipated exceptional events?
- Connected to a broad range of assured alternative suppliers who can step in at short notice?

Who, what, where - do you have the full IP picture?

- Do you know who generated your IP and on what basis they are engaged?
- Have you protected your IP in any contracts with third parties?
- Is your IP portfolio registered in key territories?
- Do you have processes in place to quickly capture and protect ideas?
- Do you know what IP your competitors own?

A double-edged sword - undertaking environmental due diligence

- Do you have a clear picture of the land for which you are a Class A or Class B person?
- Do you have processes in place to ensure proper due diligence is undertaken on land purchases, and that you can rely on it?
- Do you know which options are available if you are buying contaminated land?

National Minimum Wage - how did we let this happen?

- Have you identified where you might be asking workers to work outside of their contractual hours? Think laterally.
- Have you correctly allocated the right worker/non-worker status to your workforce?
- Are your records are up to speed? HMRC has the power to assume workers were underpaid unless you can prove otherwise.

So you think you're compliant – managing personal data post 25 May

- Are you fully cognisant and taking advantage of the Data Protection Act 2018? If you understand how it complements and expands upon the GDPR, data protection compliance can be a little less daunting.
- Are your privacy notices clear and accurate, citing the correct lawful grounds and referring to the Data Protection Act 2018 where appropriate? Are you confident that if your privacy notices were scrutinised you could justify their content to the ICO?
- Are you responding to data subject access requests promptly and fully? Do you have a tailored process in place?
- Are you gathering information regarding breaches quickly and comprehensively? Do you really know the differences between when you are required to notify the ICO and when you are required to notify individuals? Do you have a breach reporting process in place?

Time's up - have you got your Anti-Tax Evasion procedures in place?

- Do the people in your business understand what tax evasion is, and the seemingly small acts that could facilitate it?
- Do you have reasonable preventative procedures in place, addressing each of the six guiding principles: risk assessment; proportional prevention procedures; top level commitment; due diligence; communication; and, monitoring and review?
- Remember - simply changing your anti-bribery procedures will not cut it!

Head starts and false starts - minimising the impact of disputes

- Do you have processes in place to identify litigation VIPs?
- Do you have policies in place to control communications from everyone within the business in the event of dispute?
- Do you know your business's litigation strategy, and do you have procedures in place to ensure everyone's actions support that from the start?

Risk 2020 - could energy costs become the new 'cyber breach'?

- Do you know if energy costs are being discussed in the boardroom right now?
- Does your business know how to mitigate energy costs?
- Does your business have a plan in place for future energy provision?

And…

- Do you know where to go for support to identify and discuss solutions to new risks?

And finally….a message for the Board

Invest in prevention - it's cheaper than the cure.

It's estimated that £1 spent on compliance will save £7 in remedial costs of breach.

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