SLAUGHTER AND MAY/

CRISIS MANAGEMENT

Part of the Horizon Scanning series

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ACTIVISM

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WHAT WERE THE KEY TRENDS AND HOT TOPICS IN 2023?

Over the last few years, we've seen overall activism levels rebound to pre-pandemic highs and a period of sustained intensity globally, despite continued market volatility and uncertain macroeconomic conditions. Activity in Europe, and the UK especially, continues to increase exponentially – with 2023 set to be another record-breaking year. Campaigns against European companies accounted for over a third of all global activity in 2023, with UK companies representing over half of the European targets; meanwhile in the US, there was a dampening of activity levels, with US campaigns accounting for just around 40% of global campaigns for the first time.[1] A recent trend has been increased targeting of the "mega caps" – and this has been a notable feature in the UK, with campaigns against GSK and Prudential, for example.

While activism is becoming a more permanent feature of UK listed company life, the activism landscape and the tactics deployed by activists continue to evolve.

The household name activists remained very active in 2023 – with Elliott again topping the chart with 11 major campaigns launched globally – but the universe of activist players is expanding and the boundary between "activism" and "active stewardship" is blurring, in particular with traditional institutions becoming more active themselves or prepared to side with activists as an impetus for broader change. Non-core activists accounted for around 83% of campaigns in the UK – and we continue to see first time activists and spin offs from existing players enter the fray.

Despite the challenging market conditions, M&A remained the dominant activist demand - especially in Europe where almost 60% of campaigns had an M&A angle. However, this has been driven by increased calls for break-ups and divestures as a means to unlock depressed valuations, rather than calls for full company sales or "bumpitrage" given public takeover activity remains at historically low levels.

Activists are also continuing to push for Board representation and pursuing a wide range of governance objectives, either standalone or as a means of reinforcing a narrative of management underperformance to support an overarching strategic thesis. The activist-friendly UK legal framework, including relatively low thresholds for shareholder rights and requirements for annual director re-election and "say on pay" votes – coupled with increased Board accountability, as institutional investors, the FRC and ever-influential proxy advisors look to monitor compliance with the Corporate Governance Code and the quality of market disclosures – has contributed to an increased public agitation and requisitions for shareholder meetings/resolutions.

[1] Source: All data is sourced from Bloomberg market data to end Q3 2023

WHAT CAN COMPANIES EXPECT FOR 2024?

Looking ahead, we expect activity in Europe to continue to intensify, and for UK companies to remain the key targets, given the challenging market conditions, lower share price valuations and activist-friendly legal and corporate governance environment.

We expect that that the spectrum of activist investors will continue to broaden and that their playbooks will keep evolving. Over the last few years, along with leveraging their legal rights, activist investors have deployed tactics such as privately engaging with other shareholders, hiring external consultants to make recommendations, publishing open letters and using social media and microsites to bolster their campaigns. We have seen more mainstream institutional investors becoming activists in their own right – mostly through private engagement with companies so far – but we expect that to continue in 2024. We may also see more campaigns launched by first-time activists or spin offs from established players, whose playbook can be more difficult to predict.

While specific campaign objectives will again be driven by market developments, the fundamental themes of M&A, governance change and ESG will remain high on the activist agenda. For example, if M&A activity re-gains pace, we may see a return of activists taking stakes to try and sweeten announced deals or more active calls for major spin-offs. And it remains to be seen whether increasingly mandatory ESG reporting requirements will reduce the number of ESG-driven requisitions or provide more levers for shareholders to use to hold companies to account.

We are also starting to see signs that US-style settlement agreements and activists requisitioning their own board representation may become more of a feature of the UK landscape than it has been to date, so that may be a growing trend in 2024.

WHAT SHOULD COMPANIES DO TO PREPARE?

The key point to remember is that most activists are ultimately seeking a return over the short to medium term – and so will be looking for an actionable corporate event that can deliver that. So it is important for companies to think like an activist and ask themselves what that actionable step or attack theme might be and, importantly, what the company would say to rebut that challenge. Having done that exercise, companies should be proactively engaging with shareholders to ensure they understand and are bought-in to the strategy. That will help to minimise the risk of institutional shareholders, who are becoming increasingly active, siding with an activist or using a live public situation as a catalyst to voice broader discontentment with management on strategy. Companies should also seek to maintain Board and management consensus on strategy – and be live to the risk of activists seeking to exploit potential divisions.

On a more practical level, companies should be well-briefed on the legal tools available to activists and regularly monitor the shareholder register to spot signs of potential stakebuilding.

As the activism landscape continues to evolve and new players and tactics emerge, advice on how different types of activist operate and how best to plan for and respond to the full spectrum of activist situations will be invaluable.

We act for more FTSE listed clients than any other law firm and regularly advise company boards and management teams on situations ranging from private engagement to public campaigns and requisitions, as well as M&A arbitrage and takeover bid defence. You can read more here.

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SECURITIES LITIGATION

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Securities litigation, long established in the US, is now an increasing risk for UK listed companies and their boards, driven in particular by a flourishing litigation funding market. The need for corporates to carefully consider the content and timing of their market announcements has never been greater.

The Financial Services and Markets Act 2000 (**FSMA**) gives investors in listed companies a right to seek compensation for losses caused by a company's failure to provide full, accurate and timely disclosure of matters relating to its securities. The regime differentiates between misleading statements and/or material omissions in prospectuses and those in other market announcements.

- Section 90, FSMA imposes liability on companies and their directors for misleading statements and omissions in a prospectus. It is a defence for a company and its directors to show that they were not negligent in the preparation of the prospectus. An investor does not need to show that they relied on the prospectus when acquiring shares. This is the closest UK law comes to the fraud on the market theory which underpins many US securities law actions.
- Section 90A and Schedule 10A, FSMA creates a similar, but significantly less claimant-friendly, regime for other market announcements. It only bites where the relevant misstatement or omission was made knowingly or recklessly by a person discharging management responsibility (i.e. a director) and was relied upon by an investor. Only the company (and not associated persons) can be made liable.

Relatively rare until recently, there are now a growing number of section 90 and 90A claims. Many arise from regulatory settlements entered into by companies with enforcement authorities (in particular the Serious Fraud Office). Examples currently making their way through the courts include G4S (a trial to determine liability is scheduled for Q1 2024; reliance, causation and quantum will be decided later), Glencore and Petrofac. Nearly all are brought by groups of claimants, sometimes very large. It is the resulting prospect of very significant damages awards that makes this kind of litigation attractive to professional litigation funders.

However, there remain significant questions as to the proper meaning and effect of sections 90 and 90A/schedule 10A. No large-scale section 90 case has ever reached trial and there is only one judgment on section 90A: Autonomy v Lynch, handed down in 2022. And that was an unusual case on its facts which has left open critical issues, including on the question of reliance. A judgment on quantum in that case is still awaited.

Procedurally, too, there have been difficulties for would-be claimants. England has no equivalent of the US federal regime for opt-out class actions brought under securities laws. Up to now, claimant law firms and funders have had to build a book of prospective claimants before starting litigation. After proving a misleading statement was made, they have been required (in the case of schedule 10A claims) to show that each claimant relied on the misstatement in trading in shares and, in all cases, that the relevant statement caused loss to the claimant. The last two stages in particular can be legally and factually challenging, all the more so when the group of claimants is large.

A novel claimant tactic would short-circuit this process by splitting proceedings in two: in the first stage, one investor, as representative of all other investors in the same position, asks the court for a declaration that a misleading statement or omission was made. The class of investors are not active participants in this claim, indeed they need not even be aware of it. All that is required is that they be identifiable as a class. If the court finds there was a misleading statement, members of the class may, if they choose, rely on that finding to bring claims for compensation against the company.

For claimants, the major benefit of this bifurcated approach is that they need only engage with the process once it is clear that there is a factual basis for a claim. Conversely, the burden of resisting proceedings falls immediately upon defendant companies, at a time when the size of any later damages claim may be unclear. Unsurprisingly, defendants have argued this it is unfair and have challenged the use of the representative claimant model in securities law claims. In November 2023, Reckitt Benckiser and Indivior, defendants to related section 90/90A claims, succeeded in having representative claims struck out by the High Court. It remains to be seen whether that decision will be appealed and/or whether it is applied in the other representative claims started over the course of 2023.

In the meantime, funders and claimant firms continue to explore potential securities claims against listed firms, and there is increasing evidence of claims outside the established playbook of piggy-backing off regulatory settlements. Greater emphases on sustainability reporting and ESG will present a rich stream for funders and claimant firms to mine, and there are signs that their attention is already moving away from a sole focus on governance issues towards claims founded on market statements in respect of firms' environment and social credentials, including adherence to human rights and supply chain standards.

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COMPETITION AND CONSUMER LAW ENFORCEMENT

Recent years have seen an uptick in competition and consumer law enforcement. As authorities grapple with major economic developments like digitalisation, sustainability, and the cost-of-living crisis, their interventionism has increased. This trend will continue in 2024.

Tim Blanchard
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DIGITAL ENFORCEMENT AND REGULATION

Many competition authorities worldwide have focused their recent attention on the digital sector given its importance to the economy and society at large. In addition to the numerous competition probes into digital markets around the world, several jurisdictions have introduced ex ante regulation to address potential competition concerns in this space. In the EU, the six 'gatekeepers' designated under the Digital Markets Act have until March 2024 to ensure full compliance with their new obligations. In the UK, the Digital Markets, Competition and Consumers Bill (DMCC Bill) is expected to become law in 2024. The Bill will introduce a new regulatory regime for undertakings designated as having strategic market status in respect of a digital activity.

This focus on the digital sector is likely to continue for the foreseeable future. In November 2023, the G7 competition authorities issued a communiqué noting that they will continue to act in this area by enforcing competition laws, improving the existing regulatory toolboxes, and developing new regulatory frameworks.

CARTELS AND LENIENCY

Antitrust enforcement across the wider economy also remains at the top of the agenda for competition authorities.

Cartels are a particular focus area. Several competition authorities developed new procedures and technologies in response to a decline in parties seeking leniency for participation in cartel conduct. The UK's Competition and Markets Authority (CMA) and the French competition authority, for example, have noted that around half of their cartel investigations are now based on alternative sources such as individual whistle-blowers. Similarly, the Spanish competition authority uses AI tools to assess the competitiveness of public tenders.

These developments have helped reverse the decline in voluntary applications. The head of the European Commission (EC) cartel directorate recently noted that the agency had received a double-digit spike in immunity/leniency applications in 2023, following a twofold increase in 2022 of the applications received in 2021.

There has also been a strong resurgence of dawn raids across various sectors, particularly following the COVID-19 pandemic. Authorities are increasingly focussed on accessing and seizing electronic data, including server-based data that

is located outside of the premises being raided. These factors, combined with the rise of home or remote working and the use of personal devices for work, create new challenges for companies subject to dawn raids. In this environment, competition compliance and dawn raid preparedness should remain high on a company's legal agenda for 2024.

NOVEL AREAS OF INVESTIGATION

In addition to traditional concerns around prices and market allocation, competition authorities are probing novel areas of conduct as part of their enforcement efforts. A particularly hot topic at the moment is **labour** markets. The CMA, for example, highlighted this as an area for enforcement action in its **Annual Plan for 2023-2024**. They issued guidance noting that anti-competitive collusion between employers is illegal and can lead to "significant financial and personal consequences".

European competition authorities are also prioritising this area. Recent examples include investigations into no poach agreements (Portugal); wage fixing agreements (Poland) and information exchange (Lithuania). The EC has also given a clear **indication** that it is looking to investigate anti-competitive conduct in labour markets, as well as potential cartels in respect of other non-traditional areas such as purchasing or technical innovation.

These more novel areas of investigation should serve as a prompt for companies to take a fresh look at their compliance policies and consider whether training should be rolled out to additional parts of the business such as the HR, purchasing and R&D teams.

SUSTAINABILITY

Many businesses around the world are taking unilateral action to address sustainability challenges. However, it is recognised that cooperation is, and will be, necessary to deliver paradigm shifts in some areas. This need for multilateral action has seen several competition authorities issue guidance in relation to sustainability cooperation.

However, the law is still developing and there are diverging approaches between authorities. For example, both the **CMA** and the **EC** issued the final version of their guidance in this area in 2023. A key point of divergence is the extent to which, when assessing whether an exemption may apply for potentially anti-competitive agreements, consumers of the relevant products or services must be fully compensated for any competition harm or whether the sustainability benefits accruing to different consumer groups can be considered. In a break from the EC, the CMA is willing to consider wider benefits to the society for agreements which contribute to combating climate change.

These divergences mean that businesses considering sustainability initiatives which may restrict competition should ensure that they meet the conditions for exemption in all relevant competition regimes.

COST-OF-LIVING AND CONSUMER PROTECTION

Competition authorities are also focussed on the effects of the cost-of-living crisis. The CMA, for example, has carried out recent studies in several consumer facing areas, including groceries, housebuilding, rented accommodation, road fuel and vets. There have also been calls for investigations in response to the cost-of-living crisis in several other European countries, including Belgium, Norway and Spain. The EC has noted that the cost-of-living crisis is an enforcement priority with cases in the pharma, basic industries and consumer goods sectors.

In addition to competition law enforcement, we can expect to see greater consumer protection enforcement activity in the future. In the UK, for example, the CMA has been increasingly active in the consumer protection space in recent years. The DMCC Bill will give the CMA significant **new consumer protection enforcement powers**. Central to this is the introduction of an 'administrative enforcement model', whereby the CMA will have the power to issue infringement decisions for consumer law breaches. Most importantly it will enable the CMA to directly impose fines of up to 10% of an undertaking's global turnover. This legislation firmly establishes consumer law as a key enforcement priority for the CMA. Companies should expect to see the authority using its new arsenal of investigative and enforcement tools soon.

At the EU level, the Consumer Protection Cooperation (**CPC**) network process is a cross-jurisdiction mechanism aimed at streamlining consumer enforcement via coordinated action. The 'external alert' tool allows designated entities to submit complaints to the CPC network and the EC about business practices that may infringe consumer protection law. The recent use of the tool in respect of alleged 'greenwashing' claims may be a sign of more action to come in this area.

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COLLECTIVE PROCEEDINGS: EMERGING TRENDS

The UK collective actions regime for competition damages actions has developed rapidly since the Supreme Court handed down its landmark decision in *Merricks v Mastercard* in December 2020. More companies can expect collective proceedings for abuse of dominance claims in 2024.

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LEGAL FRAMEWORK

Collective proceedings were introduced to allow large numbers of people affected by breaches of competition law – who, individually, might not have the resources to pursue litigation – to combine their claims under the leadership of a class representative. There are two kinds of collective proceedings: "opt-in", where the representative claims on behalf of all those who have expressly chosen to participate; and "opt-out", where the claim is made on behalf of all persons domiciled in the UK who match a particular description, except for those who have expressly chosen not to participate.

An action by a proposed class representative (a **PCR**) can only proceed if the Competition Appeal Tribunal certifies a collective proceedings order (a **CPO**). A CPO will only be granted if the CAT: (i) authorises the PCR on the basis that it is "just and reasonable" for them to act as a representative in the proceedings (the "authorisation condition"); and (ii) certifies that the claims are eligible for inclusion in collective proceedings (the "eligibility condition").

The Supreme Court's decision in Merricks significantly lowered the bar for CPO certification and incentivised claimant law firms and funders. This has resulted in a huge increase in the number of CPO applications (with more than 30 currently pending in the CAT). While the CAT has generally adopted a claimant-friendly approach at the certification stage, recent developments may suggest a slight shift of approach.

AUTHORISATION CONDITION

In order to be authorised, a PCR must (among other things) persuade the CAT that it has adequate funding arrangements in place. Collective proceedings are invariably financed by professional litigation funders; they have typically done so in return for a percentage of the damages recovered in the event the claim succeeds. In July 2023, the Supreme Court took the market by surprise by **holding** that litigation funding agreements of this kind are caught by the definition of damages-based agreements (DBAs). DBAs are prohibited in opt-out collective proceedings and will only be enforceable in opt-in proceedings if they comply with certain conditions.

In a recent decision, the CAT held that a funding agreement revised in the light of the Supreme Court's decision – so that the funder would be paid a multiple of its investment, rather than a percentage of damages – was not a DBA and was, accordingly, valid. It remains to be seen whether that decision will be appealed. Meanwhile, the Government has proposed a change to the law which would remove the prohibition on DBAs in opt-out proceedings, but not address the underlying question of whether the definition of DBAs should be amended to take litigation funding agreements outside their scope more generally.

ELIGIBILITY CONDITION

In considering whether claims are eligible for inclusion in collective proceedings, the CAT will consider a number of factors including whether they: (i) raise common issues of fact or law; and (ii) are suitable to be brought as collective proceedings. The CAT and Court of Appeal have confirmed the low threshold (including by reiterating that suitability is a relative concept requiring the CAT to consider whether a claim is more suitable to be brought in collective proceedings rather than individual proceedings).

In **Trains**, the Court of Appeal explained that to enable the CAT to form a judgment on commonality and suitability, the PCR must put forward a methodology setting out how the relevant issues will be determined at trial. In **McLaren**, the Court of Appeal emphasised the CAT's gatekeeper function in ensuring that the PCR puts forward a clear "blueprint to trial" at the certification stage. Multiple respondents have therefore sought (mostly unsuccessfully) to persuade the CAT that the relevant PCR's expert methodology has fallen short of the required standard. However, in **Meta** and **CICC**, the CAT did take what appears to be a more stringent approach: it refused to certify the claims, although gave the respective PCRs time to improve them. It remains to be seen whether the concept of "blueprint to trial" will allow respondents to challenge certification.

OPT-IN VS OPT-OUT

The choice between opt-in and opt-out proceedings has been a key battleground in a number of CPO applications. In two recent decisions, the Court of Appeal noted that:

A. the CAT should exercise its discretion based on all circumstances of the case and that there is no legislative presumption either way;
B. it should not be that a weaker case necessarily becomes opt-in and a stronger case opt-out; and
C. where no proceedings will continue save on an opt-out basis, that is a powerful factor in favour of opt-out.

2024 TRENDS

There has been a significant increase in standalone abuse of dominance claims against tech companies, with CPO applications filed against Google, Meta, Qualcomm, Apple and Amazon.

A separate emerging trend is claimants seeking novel ways to use the collective proceedings regime by framing claims for alleged non-compliance with environmental law or regulation in other areas as competition law breaches. We are currently representing defendant companies in collective proceedings in multiple different sectors.

We expect that it will be difficult to persuade the CAT that opt-out proceedings are unsuitable (particularly for consumer claims) but, given the high stakes, we may see creative arguments on the issue of opt-in vs opt-out.

Given the developing state of the law around collective proceedings, we expect to see both PCRs and respondents continue to test the limits of certification arguments.

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WORKPLACE MISCONDUCT: IDENTIFYING AND HANDLING RISK

The character and conduct of business leaders has become an increasingly topical issue – a trend compounded by a string of high-profile resignations triggered by the personal conduct of senior figures. It is not only the individuals', conduct that makes headlines; organisations and how they respond to and investigate this conduct are also in the spotlight. In a landscape of increasing scrutiny and changing attitudes on what conduct is acceptable, organisations need to understand the various factors in play and adopt effective measures to address them at an early stage.

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OVERVIEW OF REGULATORY REGIME

The conduct of directors and other senior figures is governed by an expansive regime which stems from a range of different sources, including:

- directors' duties, contained in the Companies Act 2006 and accompanying case law;
- contractual provisions in, for example, the employee's employment contract;
- company policies, which often cover topics including equity and inclusion, workplace behaviour, discipline and reporting;
- the Senior Managers and Certification Regime (SM&CR), which requires relevant firms to assess the fitness and propriety of certain employees and corresponding conduct rules; and
- the Equality Act 2010, which seeks to protect people from discrimination and harassment.

This regulatory regime continues to adapt and grow. For example, the Worker Protection (Amendment of Equality Act 2010) Act 2023 imposes a new duty on employers to take reasonable steps to prevent sexual harassment.

EXPOSURE FOR COMPANIES AND BOARDS

The need for companies and boards to effectively address inappropriate personal conduct is heightened by their exposure to significant risks.

- Legal: misconduct within organisations can lead to legal claims brought by colleagues, and to difficult legal situations when deciding how to deal with the individual in question. The range of legal issues that can arise from instances of misconduct includes whistleblowing and related claims, victimisation and harassment claims, discrimination claims, constructive and/or unfair dismissal claims and in companies subject to FCA and/or PRA regulation, difficult questions relating to how and when to report misconduct to the regulators, and the attendant risk of challenge from the person who is the subject of the report.

- Regulatory or criminal investigation: poor conduct could trigger one or more regulatory regimes, such as those set out above, and serious misconduct such as sexual assault, theft, or financial impropriety, may lead to criminal investigation.
- Reputational: irresponsible actions, unethical business cultures and an ineffective response by the organisation, can seriously damage the trust and confidence of a business' stakeholders, including staff, investors and customers.
- Financial: workplace misconduct can damage a company's share price and create significant financial costs, for example those resulting from disruption and turbulence amongst management and possible follow-on litigation. Claims for discrimination and harassment also attract unlimited compensation.

REDUCED TOLERANCE

The likelihood of exposure is much higher now than in the past. Staff and investors feel more empowered to raise issues, and there is greater connectivity and media interest. Plus, stakeholders have less tolerance for poor behaviour, including behaviour that doesn't have a criminal element or otherwise falls below the level of producing a legal claim.

There is also evidence of regulators taking workplace misconduct more seriously. The FCA and PRA, for example, have recently published consultation papers that target improving diversity and inclusion. They are also proposing more comprehensive guidance on non-financial misconduct and to expressly include it within their conduct rules and fitness and proprietary assessments. Similarly, the Equality and Human Rights Commission has been active, recently undertaking investigations of, and reaching agreements with, McDonald's Restaurants Limited, Jaguar Land Rover Ltd and Sainsbury's.

WORKPLACE RELATIONSHIPS

The increased level of exposure has also been felt by a number of companies as a result various failures by senior figures to disclose past relationships with employees.

The effects of such departures demonstrate how important it is for businesses to manage and be seen to be managing the risks – both present and future – associated with workplace relationships or other conduct of this kind. A company might, for example, require any workplace relationships to be disclosed, or it might impose a ban on such relationships.

BEST PRACTICE

Given the increased focus on improper management and conduct, companies ought to be thinking about best practice. There is a general trend towards greater transparency, but companies could also consider:

- recruitment processes, and what qualities to look for when hiring new employees;
- creating codes of conduct, and reviewing these at regular intervals;
- developing effective whistleblowing mechanisms;
- putting in place a dedicated investigations team and processes - which can be relied on if an investigation is needed; and
- if the alleged conduct involves a criminal or regulatory element, what that means for the investigation and whether any reporting obligations have been triggered.

Please speak to your Slaughter and May contact for further advice about how to adopt better practice, prevent workplace misconduct and how to deal with it if it arises.

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CYBERSECURITY IN 2024

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The global cyber threat landscape will continue to evolve in 2024 alongside rapid technological and geopolitical developments. Potential risks from AI, a renewed focus from ransomware gangs and the difficulties in mitigating supply chain risk are issues that organisations need to manage. We've also seen the emergence of state-aligned actors as a new threat to critical infrastructure. As the risks continue to evolve, so too does the legal and regulatory landscape, with new rules expected to take effect in 2024.

Cyber risk can be mitigated with a well-considered preparedness strategy. While this may not prevent all attacks, it will flag issues to fix and provides a clear guide on how to manage an attack effectively. It is vital that organisations regularly update, and practice, their cyber incident response plans, stress-testing them in simulations, ensuring key stakeholders understand their roles and responsibilities and evolving plans to take into account current risks.

RANSOMWARE

In its latest annual review, the UK's National Cyber Security Centre warns that "Ransomware remains one of the most acute cyber threats facing the UK, and all domestic organisations should take action to protect themselves from this pervasive threat." It is important that your organisation understands how it would respond to a ransomware attack. While governments and regulators warn against payment, there are a range of issues an organisation will need to weigh up before making that decision. The first is, whether it is lawful to pay (and there are circumstances where it is not).

The key to a successful ransom response is therefore having the ability to assess, in real time, the threat facing your organisation. For example, who are the threat actors? Can you do reasonable diligence on their track record, behaviours and the seriousness of their threats? Are they inside your systems and have they copied your data? Are your backups sufficient? How long would it take to recover (whether or not you pay the ransom)? Will they release confidential/sensitive information? And are you covered by insurance?

In the coming year, it will be important for organisation to monitor the changing ransomware landscape as new threat actors, tactics and regulatory requirements emerge.

SUPPLY CHAIN

The recent Capita, MOVEit and Zellis cyber attacks are a reminder of the importance of considering supply chain risk. As companies increase their cyber security, threat actors are increasingly targeting their suppliers, who may be less secure and therefore offer a "weak link" into that organisation's systems. Alternatively, ransomware gangs may target high value (e.g. outsourcing or IT) suppliers who offer access to multiple organisations once breached.

Traditionally supply chain risk has been a blind spot for many organisations. However, recent government research suggests this is starting to change – at least in larger organisations where over half are now reviewing supply chain risk.

That said, effective supply chain management, particularly beyond first tier suppliers, is difficult. It must include new suppliers acquired into your supply chain through M&A, and legacy suppliers who still hold your data, as well as current service providers (and their suppliers).

Legislators and regulators are alive to supply chain risk, and there are plans to bring material IT service providers under both the critical infrastructure (NIS), and financial regulatory, regimes.

FINES

Fines are a reality for cyber breaches and draft guidance from the UK's data regulator suggests high penalties could be more common in future. Duplicate fines are also a risk for cross-border breaches or where different laws apply to the same incident. For example, Equifax was recently fined by the UK financial regulator despite previously receiving a fine for the same incident from the data regulator (the ICO). ICO fines will also be calculated without prejudice to any compensation claims, which again could lead to a double payout.

We are, however, increasingly seeing that proactive remediation and investigation can help reduce the size of fines.

CONCLUSION

Cyber continues to be a board level risk. Throughout 2024, organisations should regularly update and rehearse their cyber incident response plans, and keep pace with the evolving threat, and legal, landscape.

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