FT SPECIAL REPORT

Risk Management People

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Scandals put spotlight on the human element

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Getting the measure of people and their potential shortcomings presents one of the big challenges to companies, writes *Brian Groom*

If a company's success comes down to its people, as business leaders often say, then they also pose some of its biggest risks. People risk is one of the most important – if not the most important – elements of risk management. The question of how to measure and manage that most unpredictable of resources is preoccupying employers worldwide.

The financial crisis has heightened awareness of this, not least through an ever-growing list of scandals such as investment bank JPMorgan's $6bn trading losses incurred in the "London whale" affair, the alleged rigging of the Libor benchmark interest rate and the US investigation into alleged insider trading by employees of the hedge fund SAC Capital.

People risk goes far beyond the financial services sector. Prime examples include the UK's phone hacking scandal, in which journalists' covert gleaning of information from mobile phones led to the closure of Rupert Murdoch's News of the World newspaper, or the lax culture over decades at the BBC that allowed the late disc jockey Jimmy Savile to get away with sexual assaults on children.

It can range from deliberate acts to simple incompetence or poor human resources management; or from rogue traders and fraudsters to inadequate staff training, lax safety procedures and lack of performance management consistency.

"Every organisation that employs people has got to be concerned about people risk," says Carolyn Williams, head of thought leadership at the Institute of Risk Management (IRM), which has members in more than 100 countries. "As organisations get bigger and more complex, the problem multiplies."

Research by SHL, a talent management company, found that one in eight managers and professionals were a high risk to their companies,

> As organisations get bigger and more complex, the [people risk] problem multiplies

mainly through poor decision-making and communication. The risk was most acute at middle manager level.

"They have a critical role to play as they are the interface between strategy and operational execution," says Eugene Burke, chief science and analytics officer. On the one hand they have to manage compliance and commitment from frontline staff. On the other, they need to communicate decisions from leaders in a relevant way so frontliners feel motivated and empowered."

SHL found that one in eight frontline staff posed a high risk by not sticking to rules or attending to detail – which could translate into increased error rates and accidents – or by poor commitment and teamwork.

It found the riskiest sectors for all job levels were telecoms and consumer goods. The public sector and retail were the most risk averse. Banking was in the middle, but it is a sector in which a few cases can have a big impact – and it is of systemic importance, so problems there have repercussions across the whole economy.

"If you look at crises that corporates find themselves faced with, it all to a greater or lesser degree starts from some issue relating to people," says Nick Squire, a partner at law firm Freshfields Bruckhaus Deringer.

Questions about individual behaviour seem inextricably linked to a company's culture. Problems can arise if the leadership turns a blind eye to misdemeanours or tacitly encourages them, or if policies and processes are poorly communicated.

There is a global standard for risk management, ISO 31000, providing principles and generic guidelines. "A lot of work has gone into systems and processes and yet still people are not behaving as they are expected to," says Ms Williams at the IRM.

"People are looking for explanations as to why this is – and culture then comes up. Do you have a comprehensive network of policies that just don't get followed? Or, which can be just as bad, do people follow them blindly, without thinking about what they are really doing?"

The purpose of risk management is to allow risks to be taken, not to cut them out completely. Too little risk-taking can be as damaging as too much, which is arguably what happened to Eastman Kodak, the photographic film business. It saw itself as being in the chemicals rather than the image business, Ms Williams says, and failed to make the leap to digital technology.

Steve Saporito, chief executive for the Americas at the global solutions consulting group of Willis, the insurance broker, says he cannot think of any project with a client in which people risk has not been a top 10 issue in some form.

Whether it is failure to attract and retain critical staff, high turnover or poor succession planning in case important personnel leave, he says it is important to dig below the surface. It usually has a deeper cause such as poor accountability, misalignment of incentives with a company's aims or a culture in which employees are not encouraged to question the status quo.

Willis, with other brokers, accountants and others, offers "enterprise risk management", or ERM, a framework for identifying, analysing, responding to and reducing risks. Business has boomed since the crisis, especially since Standard & Poor's, the ratings agency, included evaluation of ERM in its credit rating protocol three years ago.

Some risks can be quantified, such as fraud losses per branch within a bank, stock losses at a retailer or injuries at a mining company. But people risk often defies precise quantification. "You want to get a good understanding of the risk, both at the surface level and below the surface, get some sort of qualitative five-by-five matrix of likelihood and severity to comparatively measure that risk against other risks," Mr Saporito says.

Companies also measure employee engagement to monitor the degree of commitment to the company, or the extent of compliance with ethics policies. Some use psychometric testing to establish employees' risk-taking propensity, which needs to be balanced against safeguards. As companies cut staff, the number of risk managers has in some cases been reduced, so procedures need to be firm.

Steve Culp, managing director of Accenture's risk management practice, says managing people risk is "first and foremost about communication. The policies, structures, the data being tracked are all going to be secondary". He stresses the importance of internal hotlines.

One question since the financial crisis has been why risk management in banking, which has the most complex and rigorous systems, failed. Some say the models were flawed but others believe executives simply overrode advice because profits were so tempting. It certainly seems that systems and processes did not take sufficient account of the human factor.

"The important thing is to recognise there is an issue, which has to come at board level," says Ms Williams. "Companies focus a lot on the management of their assets. People need to be seen as an asset in the same way. You can have the best rules, policies and processes, but that still might not mean that people follow them."

Companies need to show humility in acknowledging problems can happen, she suggests. "People look at an organisational car crash and think 'that couldn't possibly happen here, we're not in that sector or we are not like that' – and then you discover horsemeat in your burgers."

Confidence to expand

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Directors take action against rising tide of litigation

Insurance Corporate officers may be acutely aware of their fiduciary duties but not all are adequately covered, discovers *Jane Croft*

Earlier this month a legal case was launched against the former directors of Royal Bank of Scotland by the RBS Shareholder Action Group, representing more than 12,000 private shareholders and 100 investors.

The High Court lawsuit against Fred Goodwin, former chief executive of RBS, and Sir Tom McKillop, former chairman, centres on claims that the investors lost money in the bank's £12bn rights issue in 2008, just months before the bank had to be rescued by the government.

The action is one example of a growing wave of litigation where directors and former directors – whose actions are being scrutinised as never before – are at risk of being sued in the civil courts in the UK or abroad, or of facing criminal charges and regulatory fines.

From interest rate rigging to alleged money laundering, several of the world's biggest financial institutions have been caught up in an ever-growing list of scandals. In recent months, Barclays, UBS and Royal Bank of Scotland have been hit with fines over Libor rate fixing that, together, run into billions of dollars. In the UK, lenders have set aside about £14bn to cover compensation for mis-selling payment protection insurance.

There are fears that the recent Libor scandal could spawn class action lawsuits and become a "litigation fest", with analysts estimating that banks' total potential exposure to lawsuits relating to the affair is as high as $35bn.

The risks are not confined to the financial sector as more companies are operating in a multinational environment across many jurisdictions and can be the target of litigation, ranging from failed M&A activity to manslaughter charges.

A 2011 Directors liability survey carried out by Allen & Overy, the law firm, and Willis, the insurance broker, questioned more than 100 individuals, including directors, in-house lawyers and risk professionals.

Respondents identified the greatest five significant risks to their directors and officers as being: anti corruption legislation, including the Bribery Act; concerns about regulatory investigations; the risk of being sued abroad; fears about criminal or regulatory fines and employment claims, including harassment, age and sex discrimination. As the litigation risk has risen, leading officials at big banks generally insist their employers take out insurance policies on their behalf to cover them and provide liability cover, protecting them from claims that may arise from decisions and actions.

Directors and officers cover (D&O) has grown over the past 30 years and is worth an estimated $10bn in gross written premiums worldwide. Those policies typically cover protection for managers against the consequences of actual or alleged wrongful acts while carrying out their duties – including employment practices, shareholder actions, reporting errors, inadequate disclosure in company accounts and failure to comply with regulations and laws.

There is no shortage of capacity to cover executives in the D&O insurance market but in certain sectors, such as financial services, premiums are rising because of the recent spate of scandals and insurers' increasing nervousness about offering cover.

Julian Martin, executive director of Willis and D&O practice leader, says there is a difference between D&O cover for commercial companies and that for financial institutions, which is typically much higher. "In financial institutions there is a sliding scale of risk and, at the top, are the mega banks exposed to more claims and investigations such as Libor. It's a hardening market. D&O rates are increasing and, I think it's safe to say, double-digit increases are normal," he says.

As the risk of litigation has risen, directors, including those leaving an organisation, have a real fear of being left without cover to fight costly claims.

Jo Keddie, partner at law firm Winckworth Sherwood, says given the "increasing awareness of directors about their fiduciary duties, and because of the increasing litigation-based culture", they are now more inclined to rely on the insurance.

She adds: "Often, if I am negotiating for a client who was a senior manager and who is leaving a business, you would expect D&O cover to run over for six years after they have left."

Ms Keddie says sometimes there have been cases of former directors using D&O cover to fund their legal fees while they have been sued by their former employer.

Legal ramifications: shareholders have taken former directors of the Royal Bank of Scotland to the High Court Reuters

> There are fears the recent Libor scandal could spawn class action lawsuits and become a 'litigation fest'

To limit their exposure further, insurers have been tightening how they word policies.

When policies at institutions hit by particular problems come up for renewal, brokers say, underwriters insert exclusions that leave the institutions unprotected from some future regulatory or legal action. For this reason, some lawyers believe big banks will be unable to make many successful insurance claims over costs arising from scandals such as Libor.

One problem for multinational companies is putting in place a global D&O programme to ensure local legal compliance in a given jurisdiction.

Mr Martin notes that such a programme is far more complex than purchasing one D&O policy for the parent company and hoping it will provide global coverage for all subsidiaries wherever they are located.

For example, a UK headquartered company with subsidiaries in Brazil, Russia and Italy might find that its global D&O policy purchased in London cannot pay out for claims incurred in Russia and Brazil – which, by law, require that risks in those countries be covered by policies issued in those countries.

Executive pay comes under greater scrutiny

Remuneration

'Worth' and 'value' can prove costly, writes *Rose Jacobs*

Sir Mike Darrington, the former Greggs chief executive who led the UK bakery chain for 25 years, has a theory about why fund managers might not be putting due pressure on remuneration committees over escalating executive pay. "They'll be looking at what the CEOs are getting and thinking, 'that's less than what I'm getting'. And they'll think it's a little bit churlish to say 'no'."

In fact, that scenario might be happening as much inside the remuneration committee as outside. A study last year by the High Pay Commission, a think-tank, found that a third of directors who sit on remuneration committees for FTSE 100 companies are themselves top executives – including nine chief executives of companies in the FTSE index.

That can make pay benchmarking difficult and open to conflicts of interest. It can also introduce a complicated dance for individuals. The High Pay Commission authors point out that remuneration is a subject "freighted with notions of worth and personal value" and chief executives may find it hard to undermine their own peers by recommending, for example, below-median pay.

But embarrassment within a cohort of top executives is one thing. Last year's shareholder rebellions over pay at a handful of UK and US companies – and the public debate that followed – showed that a wider group was watching. Public opprobrium can deliver serious reputational damage to directors, executives and companies themselves. This leads to a temptation to disguise the scale of outsized pay packages with complexities, when part of a remuneration committee's responsibility is good communication.

Nor is the damage always simply reputational. Jules Quinn, a partner at lawyers Jones Day, points out that committee members are potentially liable for losses to the company if they award a pay package outside the policy guidelines. Moreover, when UK legislation comes into effect in October, making shareholder votes on pay binding, committees will need to step up shareholder engagement to avoid future legal quagmires.

Simon Patterson at Pearl Meyer & Partners, a remuneration adviser, says of these directors' roles: "I really don't think it's a very easy job. Just recently I had in the head of the board for a FT 30 committee that is looking to change the chairman of its committee.

"And it is extremely difficult to find someone to fill that role. Being the chairman of a remuneration committee is one of the most unattractive jobs in the UK at this point in time."

> 'I wonder if incentive pay is . . . a management fad – a hugely expensive one'

Last year, Mr Patterson's company launched an index describing the relationship between pay and performance at British companies by calculating a ratio of every pound paid to a chief executive – including cash bonuses, share awards as long-term incentives and golden handshakes and umbrellas – to total shareholder return. It found that directors at big companies were doing a better job of linking pay and performance than those at smaller companies. That is not, he says, simply a matter of bigger companies being at the receiving end of greater public scrutiny.

In Fact, Mr Patterson is concerned that a change to UK law giving shareholders a binding vote on pay will discourage the sort of creativity on remuneration committees that leads to strong links between shareholder returns and managers' rewards. "I'm in favour of shareholders having a very active role in how management teams are incentivised. But you can't have a one-size-fits-all programme, and the likelihood of the binding vote is that there will be a kind of cooling effect around incentive programmes."

Many experts believe that, rather than attempting to reach out to individual shareholders directly, remuneration committees should be more responsive to third parties such as Institutional Shareholder Services, the corporate governance adviser, or groups of investors such as the Local Authority Pension Fund Forum. This month, the latter unveiled a number of "expectations for executive pay", including discouraging the use of benchmarks and calling for incoming executives to get lower starting salaries than their predecessors were making when they departed.

David Pitt-Watson, a former executive at Hermes Fund Management and executive fellow at London Business School, believes committees themselves might need more power – to set a budget for a new chief executive in advance of a recruitment process, for example, rather than find themselves facing a board that has already chosen its favourite candidate and wants to seal the deal at the asking price.

Deborah Hargreaves, director of the High Pay Commission, believes committees will naturally become more responsive to shareholder demands, and those of the public, if and when they open their ranks to members with a wider range of backgrounds, including employees of the companies in question.

She also urges directors to question some common assumptions about pay, including that managers really are motivated by long-term incentive packages. "Executives often discount that sort of element of their pay . . . in part because they often can't do anything about [hitting] the targets. I wonder if incentive pay is, like all of these things, a kind of management fad – a hugely expensive one."

Homing in: salary packages can be very complex Alamy

Performance anxiety spells trouble for those at the top

Modern maladies

Cost of stress-related illness runs high, says *Gill Plimmer*

Last year Ton Büchner, the chief executive of AkzoNobel, the Dutch chemicals group, was granted special leave to recover from what the company described as "temporary fatigue". Akzo said he had taken "a bit too much hay on his pitchfork" and added that "CEOs are also human beings".

Mr Büchner is not the first chief executive to be given time off for a stress-related illness and lawyers warn that they are seeing more cases like this as the recession adds to pressure on senior managers.

Not only are chief executives under relentless need to outperform their competitors, but they are doing so amid turbulent economic conditions, often in the glare of the media spotlight.

Fraser Younson, a partner at Berwin Leighton Paisner, a law firm, says: "It's easy being chief executive when you're pedalling downhill but when you have headwinds it is a whole lot harder.

"The pressure to deliver acceptable returns for shareholders is greater and more difficult. Many CEOs simply haven't got the experience to deal with this economic environment where they are being asked to do more with fewer resources."

Although managers should be looking for signs of increased stress among employees and willing to raise it, this becomes much more difficult with senior executives, who are likely to become defensive.

"It takes quite a brave person to say to a chief executive 'you're under stress', because they may take it that someone is after their job," says Mr Younson. "As soon as the individual starts thinking this way, their behaviour will start reflecting that and it will become a self-fulfilling prophesy."

Mr Younson says even attempts to reduce their work can backfire. "One option is to try and lose parts of the role for the chief executive. But, again, any suggestions like this can run the risk of making the chief executive defensive as he can perceive it as trying to undermine his command."

Despite attempts to reduce the stigma surrounding mental illness, chief executives are often reluctant to raise it for fear it will be seen as a sign of weakness. It is also hardly surprising they are under stress.

"Chief executives are paid a lot of money to make tough decisions and, despite the law often providing them with protection, they often don't want to tell anyone because it will make them seem vulnerable or not up to the job," says Edward Goodwyn, partner at lawyers Pinsent Masons.

"This can add to the stress and send it spiralling further."

Added to this is the problem that chief executives are unlikely to use any counselling services made available to employees. Chief executives need their own support mechanism, particularly if, like Mr Büchner, they have moved from smaller, less complex jobs.

Although the law provides protection for employees, including chief executives suffering from long-term illnesses, stress can be nebulous, making proper assessments difficult.

"It's hard to measure because stress thresholds vary greatly from person to person. While some people thrive under pressure, others wilt," says Mr Younson.

Nevertheless, he says non-executive directors should be vigilant, looking for any indications that a chief executive is struggling. Signs can include poor-quality decision making, a lack of attention to detail, irritability and impatience. Proper medical advice is key.

"The first thing any employer should do when any employee goes off sick is to get independent advice on what is really going on and how long the illness is likely to last," says Mr Goodwyn.

In many cases the illness is shortlived. António Horta-Osório, chief executive of Lloyds, took two months off for stress-related sleep deprivation last year after taking over the job amid intense political and public scrutiny of banking. He said later that he had been "like a battery going to zero".

> 'It takes quite a brave person to say to a chief executive "you're under stress"'

Although his fitness for the job was called into question at the time, the share price – which fell 5 per cent when Mr Horta-Osório's condition became publicly known – soon recovered, and he continued with a significant restructuring of the group soon after his return to work.

All the same, Mr Horta-Osório has reduced the number of people reporting to him and strengthened the roles of his senior management team.

In both the AkzoNobel and the Lloyds cases, both men became ill just months after taking the job.

This suggests that the biggest stress may be at the beginning of new employment, when external expectations are at their highest and internal support networks have yet to develop.

It may also just be that work is inherently stressful.

A survey from Towers Watson, the consultancy, and WorldatWork, an association of human resources professionals, found that 32 per cent of UK companies, 47 per cent of businesses in the rest of Europe and the Middle East and 61 per cent of those in the US said employees often experienced "excessive pressure" in their jobs.

Managers in particular, according to an earlier survey of 32,000 employees worldwide, are "generally unhappy [and] pressed for time".

Contributors »

Brian Groom
UK Business and Employment Editor

Brooke Masters
Chief Regulation Correspondent

Jane Croft
Law Courts Correspondent

Jonathan Moules
Enterprise Correspondent

Gill Plimmer
FT Correspondent

Rose Jacobs
FT Contributor

Miles Johnson
Madrid Correspondent

Aban Contractor
Commissioning Editor

Steven Bird
Designer

Andy Mears
Picture Editor

For advertising details, contact: **Ceri Williams** on +44 (0)20 7775 6321: email Ceri.Williams@ft.com, or your usual FT representative.

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Tighter rules fall short of halting rogue traders' pursuit of profit

Control Criticism of institutions continues over lack of supervision, reports *Jane Croft*

As Kweku Adoboli was sentenced to seven years last year after being found guilty of Britain's biggest banking fraud, the trial judge noted Adoboli had been "arrogant enough to think that the bank's rules for traders did not apply to you". The trader had gambled and ran up a $2.25bn loss at Switzerland's largest bank on unauthorised, loss-making trades.

Mr Adoboli, who is appealing against his conviction, is the latest in a line of "rogue traders" racking up losses despite banks tightening their risk management controls after each scandal.

In 1995, Nick Leeson brought down Barings Bank by hiding a $1.4bn loss in Singapore. Other cases included "Mr Copper", Yasuo Hamanaka, who was found in 1996 to have lost $2.6bn in trying to corner the copper market in London for Sumitomo Corporation. John Rusnak, a church-going trader for Allied Irish Banks (AIB) in Baltimore, lost $691m on bad currency bets that he hid with fictional trades in 2002.

The biggest case was in 2008, when Société Générale, one of France's biggest banks, found that one of its traders, Jérôme Kerviel, had hidden €4.9bn of losses on the bank's Delta One desk. Mr Kerviel recently lost an appeal against his sentence.

The Financial Services Authority, the regulator at the time, last year fined UBS £29.7m for "significant control breakdowns" in light of the Adoboli affair and criticised the bank for having ineffective computer risk controls and "poorly executed and ineffective supervision" that allowed Adoboli to breach risk limits and book fictitious trades.

Rough trade: Jérôme Kerviel hid enormous losses at Société Générale Reuters

UBS neglected to question the increasing revenue of the exchange traded funds desk, of which Adoboli was a member, and failed to ensure that there was a corresponding increase in controls in place over the desk, the FSA found.

The cases have raised questions as to why financial institutions find it so difficult to identify such damaging activities by small numbers of individuals and whether banks can improve their risk management systems further so they can detect unusual or suspicious trading patterns.

Last year JPMorgan was embarrassed after it disclosed at least $6bn in losses from trades made by a London-based unit charged with investing its excess cash. Led by a trader dubbed the "London Whale", JPMorgan's bets came to dominate a portion of the credit derivatives market and led to huge losses.

Some observers suggest that rogue traders may be a product of the much criticised "casino banking" culture characterised by its ruthless pursuit of profits and intolerance of failure. In the case of Adoboli it emerged at his trial that one line manager praised him for making $6m before scolding him for breaking risk limits in the process.

Alex Hindson, chief risk officer of Amlin, the reinsurance company, and an Institute of Risk Management director, says: "Banks have suffered in recent years from the impact of a misalignment of interests, where traders were able to take huge trading positions knowing they would gain from the upside and not suffer from the downside.

"Tone is set very clearly at the top of organisations. The key to challenging such behaviour comes from driving change based on a clear set of values from the board and being clear about a no-tolerance culture. In order to avoid stifling innovation and entrepreneurialism, management need to deploy incentive arrangements that encourage appropriate risk taking and penalise inappropriate risk taking."

Peter Hahn, a banking expert at Cass business school notes the lack of examples of rogue traders who have been sacked by banks after making profits – rather than losses. He says that in the end it comes down to bank management fully understanding the risks that are being taken.

He adds: "There is no substitute for a chain of command which understands what the most junior risk takers' activities are. There is always someone who wants to get around the system and spends time figuring out the system weaknesses."

Investment banks have introduced steps such as making all traders take a minimum holiday period so any problems are likely to be uncovered during that time and using IT systems to pick through trading data to query suspect transactions, as well as monitoring traders' risk limits.

Many banks have multiple IT systems that have previously failed to pick up rogue traders until it was too late. Sometimes this is because traders have entered fictitious transactions or because they have been able to mislead junior back office staff who have questioned the validity of their trades.

'There is always someone who wants to get around the system'

Hitesh Patel, forensic partner at KPMG in London, says there are measures that banks could take to identify and control risk, but adds that it is not always easy.

He says: "Banks are constrained by a number of factors including legacy systems often from numerous bolt-on acquisitions and systems bolted on to each other."

Mr Patel adds that "ultimately you can never devise a foolproof system", as those systems are designed by human beings and, if determined, they can always get round them.

Crisis moves chief risk officers from supporting role to centre stage

Positional priorities

With greater responsibility comes more complexity, says *Brooke Masters*

A decade ago, chief risk officer was the kind of job that many financial institutions considered nice to have rather than mission critical. In many groups, CRO was considered a backwater post that ambitious executives tended to try to avoid. How things have changed.

A survey by Deloitte Touche Tohmatsu of 86 financial institutions from around the world, representing more than $18tn in combined assets, found that 89 per cent of institutions reported having a CRO or equivalent, up from 65 per cent in 2002. Even 81 per cent of small institutions reported having one.

The 2008 financial crisis proved the catalyst as banks and other financial institutions realised that the failure to take long-term risk into account when setting business targets had endangered institutions and the broader financial system.

In the UK, Sir David Walker's 2009 report on what went wrong in banking called on banks to give a much higher priority to risk. Regulators around the world pushed other financial institutions to do the same.

CROs are expected to identify and warn the board about emerging risks and problems with concentrated exposure to particular sectors, products or countries. They play a much bigger role in driving the business, with 79 per cent having input into business strategy and 63 per cent playing a role in approving new products, the Deloitte survey found.

"The role of the CRO has gone from being corporate policemen issuing tickets to one of oversight, setting the risk framework in which the game is played and monitoring like crazy. It is a pretty dramatic change," says Kevin Blakely, a former chief risk officer now with Deloitte.

The CRO reports directly to either the chief executive or the board of directors at 80 per cent of institutions surveyed, reflecting how the role has become a true C-suite position, up there among the corporate chiefs.

"This is quite a broad role which encompasses a range of skills: quasi-legal, accounting, consulting, operations and technical. There are few people that encompass all these skills and have experience in handling regulatory investigations successfully. In short, institutions will pay a premium to attract this rare commodity," says John Higgins, senior managing director at FTI Consulting.

The increased demands on a CRO have made hiring people for the position much more complicated and expensive.

"Against the backdrop of phenomenal job cuts in the financial sector, there is not only increasing red tape but completely new regulatory bodies," says Suzanne Horne, employment Partner at Paul Hastings. "Top talent in compliance is now like gold dust." And people expect to be remunerated accordingly. "However, there are concerns as to whether many, other than a select grouping, have the right skill set," she adds.

Benedict James, law partner at Linklaters, says he is seeing a similar trend: "In at least one UK bank the chief risk officer is rumoured to be the highest paid employee in the bank, which was unimaginable in the days of traders getting almost all the bonuses. It is definitely the chief risk officer's turn in the sun."

Some groups have a hard time figuring out what they want from a chief risk officer.

"The role hasn't previously existed in its present form, meaning in many cases candidates are recruited on potential rather than experience as they haven't had previous experience of all aspects of the role," says Anne Murphy, financial services partner, at headhunter Odgers Berndtson. "In larger institutions, this can mean that internal candidates who know the culture and are well networked within the business are seen as less of a risk to appoint."

'In at least one UK bank the chief risk officer is rumoured to be the highest paid employee'

Mike Vernon, managing director at business transformation group Consulting People observes: "The role of the CRO is ill-defined. Most come into it from a technical financial position, but the role should be about using events to drive enterprise performance improvements. To do that you need more of an organisational development orientation, someone with a broader range of skills who understands that the roots of risk are in the thinking, attitudes and behaviours of the people who produce the risks."

The higher profile puts off some potential candidates. "The public scrutiny of the CRO role is not attractive to all candidates. This is especially the case in the UK, US and Germany, where regulators are putting pressure on boards to make sure they have a very strong CRO," says David Cookson of Russell Reynolds Associates.

The broader employment picture in financial services may help solve the problem. Big job cuts are prompting some people with good front-office experience to consider a shift into risk and control departments.

There is movement within the sector as a whole. Banks, for instance, who upgraded their risk managers are suffering as hedge funds and asset managers poach well-trained staff to follow suit.

Workplace culture needs tender nurture

Case studies

Innovative lines of communication with staff are central to success, writes *Jonathan Moules*

It is common for successful entrepreneurs to boast that it is their people who make their business successful. Yet building a team while maintaining the entrepreneurial spark that drove the growth in the first place is a difficult balancing act to maintain.

Dan Mountain co-founded Buyagift.com from a bedroom at his home in Muswell Hill, North London, in 1999. He is now chief executive of the company, which specialises in experiential gifts, from hotel breaks to hot air balloon flights, and employs more than 120 people in the UK, France, Italy and Spain.

Mr Mountain is clearly proud that Buyagift, which turns over about £30m a year, has won awards for being among the best places to work, as well as being the largest and most profitable gift experience retailer in the UK. He is clear that employee happiness is critical to all of this.

"Success has come as a result of getting the majority of our recruitment decisions right," he says. "We take the attitude that you need to spot the people who are best for your business and then offer them whatever they need."

Among the incentives is an opportunity to try any activity from the website up to a value of £250 once employees have completed their first year.

Team builder: people need to feel important, says Dan Mountain of Buyagift.com

"We need to be careful about making people feel that they are vitally important," says Mr Mountain. "But it is also about being part of a team."

One of the team-building exercises at Buyagift is Pizza Friday, when all 90 of the staff in the London office are encouraged to gather in the same room and chat over some comfort food.

"The hardest thing about growth is you go from a business where everybody knows everybody else to a situation where you have to work hard to make sure that you don't get people working in silos," says Mr Mountain.

Transparency is vital. At Buyagift this is done through all-staff quarterly meetings, where Mr Mountain and his directors update everyone on the company's performance. "We really try to have a very open dialogue where everybody is a part of the team." Mistakes have been made, admits Mr Mountain. The most memorable for him was when they put the business up for sale in 2008, which allowed their angel investor, Jon Moulton, to leave.

Mr Mountain says that, at the time, they stopped being as transparent as they had been with their staff for fear that the sale might not happen. Morale dropped as a result.

'We're clear about our vision and values and share these with the whole company'

"It was the first ever time we started to be secretive as a business because we didn't want to tell people in case it didn't happen," he explains. "Actually, that was the first year when we had relatively poor results from our [internal] best workplace surveys. It was a wake-up call for us."

Mr Mountain admits that the company was a little slow in hiring a full-time head of human resources to oversee the introduction of robust procedures for hiring and developing its staff.

"That happened about eight years into the business when we had 40 or 50 people, which was probably a bit late," he admits.

Tamara Littleton, chief executive of eModeration, faces a different problem in maintaining the entrepreneurial buzz because the vast majority of the 450 staff she employs to manage online discussion forums work from home.

"Right from the start, I had a flexible workforce who could increase their hours when we got busy, which meant we could scale quickly," she says, adding that the human resource systems have had to cope with her rapid growth in headcount.

"That means that you have to work really hard to create a company culture and bring new people into the family of the business."

As a company that makes its business from managing online discussion groups it is perhaps not surprising that eModeration has employed social networks to encourage camaraderie between its disparate workforce. It uses Yammer, a social network aimed specifically at corporate users, as an online space where employees can talk to each other about non-work things.

The real world is also important, however, says Ms Littleton.

To this end, the company encourages people who live near each other to meet up. A company coffee budget exists for people to have a drink with one another.

"If you don't share the company values quickly, your culture can change when you hire new people," explains Ms Littleton, adding that some staff organise house swaps when travelling between their offices in London, New York and San Francisco.

"We've worked hard to create a culture where people want to support our growth.

"We're clear about our vision and values and share these with the whole company. Our team wants us to succeed."

Proving the effectiveness of such systems is not always easy. But Ms Littleton says a key indicator of eModeration's success was that, in its first five years of trading, when the payroll grew to 120 people, only two of those left the company.

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Ageism factor faces critical legal test in the UK

Discrimination Number of claims increases, defending a case is costly and negotiation offers a better way forward, reports *Gill Plimmer*

No horsing around: racing pundit John McCririck seeks £3m in damages Getty

Earlier this year John McCririck, the 72-year-old UK racing pundit, announced that he was seeking £3m in age-discrimination damages after being ditched by Channel 4.

The case is the latest in a series of age-related claims brought against broadcasters, and highlights the growing risk to employers of failing to treat older employees fairly.

Although the number of age discrimination claims has been rising, lawyers say that they have proven harder for employees to win than cases dealing with other forms of prejudice such as race, gender or disability.

This is partly because the legislation is relatively new and lawyers are still looking to see how the age discrimination law is applied.

Age discrimination was added to the list of eligible claims to be taken to employment tribunals in 2006, while the default retirement age, under which employers could force workers to retire at 65, was phased out just two years ago in 2011.

"Race and sex discrimination claims have been around for 40 or so years," says Edward Goodwyn, partner at lawyers Pinsent Masons.

"But, with age discrimination, we are in an area of law that is still relatively novel, looking at cases as they come out."

Nevertheless, more cases are being won by employers than expected. This is partly because the law says it is possible to justify direct discrimination on the grounds of age if the company has a legitimate aim in mind.

For example, employers can argue that they are justified in edging out older workers if there is a need to provide career progression for the rest of the workforce. This defence has added currency at the moment, when few companies are expanding their workforces.

"The onus is on you to provide opportunities for career progression for your staff," says Mr Goodwyn. "But in a recession – where there is little or no growth at your company – you may be able to argue that it is necessary to elbow older workers out."

But the number of age discrimination claims is growing. In 2008-9, there were 3,800 claims brought on age grounds, which by 2010-11 had risen to 6,800.

As with racial and gender diversity, it often takes years for attitudes to change and this seems to be the case with age discrimination.

"The public perception is that age discrimination is not as bad as other forms of discrimination such as gender, or race," says Fraser Younson, partner at Berwin Leighton Paisner, a law firm. "It often doesn't click with people as a prejudice."

He says the larger companies tend to be better at dealing with older workers, partly because of the new rules against age discrimination, but also because they are keen to retain expertise, perhaps in exchange for more flexible work arrangements.

"The larger companies are on the whole quite sophisticated now. They are saying to workers 'so long as you're contributing, there's a place here for you'. But the smaller ones, particularly those without dedicated human resource teams, are struggling more," says Mr Younson.

With the employment rate for women aged 60-64 increasing, according to the UK Office for National Statistics, as a result of the gradual increase in the state pension age for women since 2010, the issue is likely to grow.

> 'The onus is on you to provide opportunities for career progression for your staff'

The Chartered Institute of Personnel and Development (CIPD) believes companies should be providing the same training and career development opportunities for older workers as they do for younger staff, but its research shows that most do not.

"If you are going to have a conversation about capability, then you need to give all members of staff equal access to training and career development. That's particularly true if you want to start having discussions about retirement, as you could open yourself to claims of age discrimination if you don't," says Ben Willmott, head of public policy at the CIPD.

According to Eversheds, the lawyers, almost half of employers would like the default retirement age reinstated. It says fewer than 3 per cent of organisations now have a policy of mandatory retirement for their employees, down from 69 per cent two years ago. More than half said the abolition of the default retirement age has led to an increase in the number of employees staying on beyond 65 or normal pension age.

With the average award for an age discrimination claim in a tribunal standing at £19,237, and the average cost to an employer of defending a tribunal claim at £8,500, employers are advised to prevent cases going to court or tribunal.

Although Mr McCririck's case is still to be heard, broadcasters have faced big fines before.

In 2011, Miriam O'Reilly won an employment tribunal case, claiming age discrimination after she was dropped from the BBC's *Countryfile* in 2009 and replaced by younger presenters. At the time, the then director-general of the BBC, Mark Thompson, said he hoped the case would be regarded as an "important wake-up call" for the corporation.

Broadcaster Selina Scott also reached a settlement with Channel 5 over an ageism claim.

Prejudice makes for a vulnerable workplace

Mind matters

Gill Plimmer finds the recession has taken its toll, with employers struggling to help mentally ill employees

Six years ago British celebrities, including Stephen Fry and Ruby Wax, headlined a campaign aimed at challenging attitudes in Britain towards mental health problems. Funded by taxpayers' and lottery money, the campaign, Time to Change, will continue until 2016.

Despite this, a study by the British Journal of Psychiatry published this month found that prejudice against those with mental illness remains deeply entrenched. Researchers attributed this, in part, to the recession, saying it was consistent with evidence that hostile behaviour towards other groups of people with disabilities had also increased. They acknowledged that it takes time to change attitudes that are deeply entrenched in society.

The social stigma surrounding mental illness poses a particular problem for employers, who may find staff are reluctant to raise problems until crisis point has been reached.

"What tends to happen is that the employer doesn't even know there's a problem until they receive a note from the GP saying their employee is sick with stress," says Nick Robertson, partner at lawyers Mayer Brown.

It is also a matter for concern because staff members suffering from mental illnesses, such as stress and depression, are protected by law. Since 1995, employers have been required to accommodate staff with mental illnesses and make adjustments, as they would for someone with physical disabilities, so the employees can do their work.

"Even someone who has only been off work for a month will qualify for legal protection if the law views them as suffering from a disability," says Mr Robertson.

"In the same way that employers are expected to provide colleagues with physical disabilities wheelchair access and not require them to walk up five flights of stairs, they are expected to make adjustments for staff with mental illnesses."

This could include introducing shorter hours, more support or reducing the most stressful part of the job. Whether the source of the illness is at work or at home is irrelevant. The cause does not matter. There only needs to be evidence that the staff member is suffering.

Mr Robertson advises employers let staff know that they view mental illnesses in the same way they do physical disability and that mental illness is nothing to be ashamed of. At the best organisations, they will encourage employees to talk to human resources so that, for example, work loads can be adjusted.

"In some cases, the human resource department hasn't even told the line manager that the staff member has a mental illness. They have just instructed the line manager to go easy on them as they have 'issues'," says Mr Robertson.

Once employers have received a sick note from an employee, they should immediately get an independent assessment from an occupational health adviser, who should be given access to the staff member's medical records. Although the adviser cannot force the patient to consent to this, most will. "The number of malingerers is minimal," says Mr Robertson.

Most employees go back to work, but the cases that are most likely to end up in court are those where the patient has returned to work and the employer has failed to make any real accommodation to the mental illness.

An employer's obligation not to discriminate against people suffering from mental illness, and to make reasonable adjustments to their work, applies irrespective of whether the employer is responsible for the illness. Employers can be liable for damages for personal injury if they caused the mental illness, for example by overworking an employee to the point where they became ill.

"Where employees have won damages for personal injury, typically they have often been off sick for several months. Then they have gone back to work, with a medically recommended return to work plan and the employer has flung him back in to the same situation as previously and, predictably, the employee has got sick again," says Mr Robertson.

"The drive towards leaner workforces means more people are being given impossible workloads and this can only result in more claims."

> 'Most employees want to go back to work, so they want to co-operate'
> Nick Robertson

Patrick Woodman, head of external affairs at the Chartered Management Institute, agrees. He advises employers to create a healthy workplace from the outset, but says CMI's research shows that most companies are going in the "wrong direction" at present.

"A lot of the symptoms of mental illness are more common in declining organisations than growing organisations," he says. "This includes, a more bureaucratic and authoritarian management style, which has become increasingly prevalent in the UK in the past five years."

Mr Woodman says this tends to be counterproductive as it does not empower employees. "More open and flexible employers tend to have better health outcomes."

According to a recent survey by the CMI, managers were concerned about the effect of longer hours and were taking more days off sick as a result. They also felt their quality of life had deteriorated over the past five years.

AFP

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Politics far afield demands attention

Latin America

Trust is a hard won commodity for multinationals in the region, says *Miles Johnson*

Courting trouble: Argentina last year seized control of Repsol subsidiary YPF Reuters

During Spain's economic crisis Latin America has been one of the few redemptive stories for the country's often beleaguered corporate executives.

After many of Spain's largest companies invested heavily in Latin America over the past 15 years, its fast growth and profitability have provided a much needed shelter as earnings at home have collapsed in many sectors.

Indeed, tales abound of the "Jekyll and Hyde" working days of executives at large Spanish companies. They arrive in the morning in Spain, look at problems facing their businesses at home and slump back in their chairs depressed. By the afternoon, when Latin America has woken up, they see the operations on the continent are booming and they can smile again.

At the same time, Spanish corporate investment in Latin America has not been a simple story of seamless growth and success. While the recent past has seen a greater degree of political and economic stability in many of the continent's largest countries, there have been reminders of disasters that can befall companies working in politically unstable jurisdictions.

In April last year Repsol, the Spanish oil and gas company, saw the Argentine government, led by Cristina Fernández de Kirchner, seize control of its YPF subsidiary.Spanish executives of the company fled Argentina and Repsol went into a tail spin, its share price tumbling, as the oil group rushed to sell assets to avoid a credit rating downgrade.

The need to maintain good relationships with governments has added a new dimension to the job description of Spain's leading executives, and keeping tabs on political developments far away from home has become an important aspect of any company's risk management. Ahead of the YPF expropriation Antonio Brufau, Repsol chairman, was forced to make several trips to meet with the Argentine government as it became increasingly belligerent towards the Spanish oil group.

Eduardo Puebla, head of investment banking for Spain and Portugal at Itaú BBA, the Brazilian bank, says there has been a big divergence between countries in Latin America.

"Countries like Brazil, Mexico and Colombia are very well prepared, professional and open to investment. Chile has always been stable and Peru is increasingly seen by companies and investors as a promising location. Then there are other countries that have been more colourful for outside investors."

> 'We act ethically, and we take an absolutely neutral position with the government'

For Spanish companies, maintaining good relations with multiple governments across Latin America has become much more important as earnings from their subsidiaries there make up an ever-greater chunk of overall profits.

For Antonio Huertas, the executive chairman of Mapfre, the Spanish insurer (the largest across Latin America by premiums) the best approach to government relationships is to be as professional as possible, while at the same time contributing to those country's that the company operates in.

"We act ethically and we take an absolutely neutral position with the government," he says.

Mr Huertas has spent many months of the past year in numerous Latin American countries meeting officials since taking over as head of Mapfre in 2012. "We adjust to where we are. We are always good corporate citizens, and we contribute socially in many countries and do lots of development projects."

Yet Mr Huertas stresses the need for governments to provide a stable legal framework for foreign investors. "We always need judicial security, as without that we would have a very complicated situation," he notes. "Latin American governments know they need companies to help growth, which makes us necessary and governments respect that."

While investments by companies such as Telefónica, Santander, BBVA and Iberdrola in Brazil, Mexico and others have been largely judged by analysts and investors as successes, with few doubting the ever-improving investment climate of those countries, other locations continue to be problematic from the standpoint of political risk.

Venezuela, in a state of political upheaval following the death of Hugo Chávez, has long proved a complicated country for Spanish companies. A devaluation of the Venezuelan bolívar in February provided fresh frustration for several of the multinationals that operate there.

More recently, Nicolás Maduro, Mr Chávez's successor and Venezuela's recently elected president, issued a frosty reminder to the Spanish government about investments by its companies in Venezuela after Spain's foreign minister questioned the legitimacy of the vote and called for a recount.

Relations between Argentina and Spanish companies and Madrid are still tense after the YPF expropriation, with no settlement yet reached between Buenos Aires and Repsol. The Spanish company continues to pursue Argentina through the international courts.