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GDPR and the cyclist

'Yet this week alone, I have had three conversations with CIOs (yes, that's Chief *Information* Officers, not CEOs) who are not even aware of GDPR, let alone its impact for the systems and data they are meant to be responsible for. Even fewer have made other key executives aware of the governance implications of GDPR or the impact it is likely to have on the business.'

Sophie Johnson

Ruminating on remuneration

'Many had hoped for some fresh and innovative thinking followed by some well targeted reforms. In truth the Government's response [to the Green Paper consultation] proposes reasonably modest and incremental changes which will do no harm and may do some good but do not appear to deliver the significant changes which many had hoped for.'

Vanessa Jones

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News

The state of reporting in the FTSE 100

'Some companies are going the extra mile to find success for themselves and their stakeholders, however a number of laggards remain lost', according to Black Sun's annual flagship Complete 100 research. The research, *The Real Drivers of Value: Lost and Found*, analyses the state of reporting in the FTSE 100, identifies reporting trends and best practices and assesses how companies are responding to challenges and changes within the reporting landscape. Three key themes emerge: value creation, evidencing long-term thinking and stakeholder insight.

Value creation

The research shows that there is a greater focus on wider purpose, with the value created for stakeholders and alignment with corporate values and culture being common themes and the word 'stakeholders' used extensively throughout quite a number of FTSE 100 Annual Reports.

Sixty-three per cent of the FTSE 100 take a value creation approach to business models, describing the resources and relationships on which they depend and the types of value they create. There is also a shift in the number of companies that are integrating value that does not show on the balance sheet throughout the Annual Report, especially in the strategy section. Sixty per cent of FTSE 100 reports set out their purpose, now outlining their 'reason to exist' and 30 per cent of companies also provide an investment proposition that sets out strengths and opportunities and use business models to articulate their value-creation process.

Long-term thinking

Only 10 per cent of company reports demonstrate long-term planning, however 77 per cent provide narrative throughout that suggests that they are making investments in improving existing capabilities, 55 per cent in building new capabilities and 56 per cent reporting on investment in human capital. There is also a greater focus on the long-term regarding remuneration with more deferral of bonuses, additional holding periods for vested awards and higher shareholding requirements. While the most common shareholding requirement for CEOs remains 200 per cent of base salary, more than 20 per cent of companies now have a requirement of 300 per cent and more than 20 per cent have a requirement of 400 per cent or more.

Most Annual Reports talk about long-term value creation rather than taking a more long-term view. Only 31 per cent set any kind of timeframe for their strategy and in the market review only 30 per cent of companies provide a specific future-orientated discussion of the market outlook. Outside the strategy and market review, only 38 companies outline the board's role in succession planning and just over a quarter of the FTSE 100 discuss how capital is being invested back into the business in a way that makes it clear that this is part of the capital allocation strategy.

Stakeholder engagement

Sixty-seven per cent of companies describe how they engage with their key stakeholder groups (typically through surveys), employees (64 per cent) and customers (39 per cent) being the most frequently-engaged groups. However, engagement tends to be 'owned' by different internal teams rather than taking a holistic view across all stakeholder engagement programmes to ensure consistency of approach. Usually stakeholder discussions feature towards the end of the Strategic Report in the 'sustainability' or 'people' sections and are not always put into strategic context. In other sections of the Annual Report just under half of companies integrate stakeholders into their business model discussion and a number also publish KPIs that relate to stakeholder satisfaction: 53 per cent for employees and 29 per cent for customers.

Many companies provide a top-line overview of stakeholder engagement, however, only 11 per cent outline what stakeholders expect from them. A similar number provide materiality narrative that links stakeholders' concerns to the company but, more often than not, the focus of these discussions is delivered in the context of 'sustainability' and does not encompass the whole organisation or all key stakeholders. Existing levels of disclosure in the Corporate Governance Report do not appear to reflect the prominence of the current stakeholder debate and few provide evidence, in any kind of detail, of stakeholder representation at board level or the board's regard for key groups.

Optimising Annual Reports

Annual Reports should be more forward-looking, focus less on contextualising past performance and more on identifying future drivers of value and providing a stronger road map for the future. The narrative should look at how investment in existing capabilities and new capabilities support execution of strategy. There should be stronger use, and communication, of corporate purpose in considering how to prioritise and operate as an organisation; clear evidence of the benefit of stakeholder engagement and alignment with corporate purpose. For consistency, a holistic view should be taken across all stakeholder engagement programmes; and there should be better alignment of stakeholders' expectations and what stakeholder engagement programmes set out to achieve.

For more information go to: www.blacksunplc.com/en/insights/research/complete-100--the-real-drivers-of-value--lost-and-found-.html

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International

G20 Guidelines on climate change

New Guidelines have been published by the G20 that will change the way individuals, companies, investors and regulators manage the financial risks of climate change. The Guidelines, *Recommendations of the Task Force on Climate-related Financial Disclosures*, create a common language for talking about climate change as a financial risk and will drive more detailed reporting on how climate change is impacting investment portfolios, investment decisions, financial performance and strategies to manage the risk. The Guidelines are voluntary but are already being adopted by big investors who want a standard for reporting on climate risks.

Core elements

The Guidelines are structured around four themes: governance, strategy, risk management and metrics and targets, supported by recommended disclosures that build the framework that will help investors and others understand how reporting organisations assess climate-related risks and opportunities. For the financial sector and certain non-financial sectors, supplemental guidance has been developed to highlight important sector-specific considerations and provide a fuller picture of potential climate-related financial impacts in those sectors.

Governance – the organisation's governance around climate-related risks and opportunities. Organisations should describe the board's oversight of climate-related risks and opportunities; and management's role in assessing and managing climate-related risks and opportunities.

Strategy – The actual and potential impacts of climate-related risks and opportunities on the organisation's businesses, strategy and financial planning where such information is material. Organisations should describe the climate-related risks and opportunities the organisation has identified over the short-, medium-, and long-term; the impact of climate-related risks and opportunities on the organisation's businesses, strategy and financial planning; and the resilience of the organisation's strategy, taking into consideration different climate-related scenarios, including a 2°C or lower scenario.

Risk management – The processes by which the organisation identifies, assesses and manages climate-related risks. Organisations should describe its processes for identifying and assessing climate-related risks; its processes for managing climate-related risks; and how processes for identifying, assessing and managing climate-related risks are integrated into its overall risk management.

Metrics and targets – Methods used to assess and manage relevant climate-related risks and opportunities where such information is material. Organisations should disclose the metrics used to assess climate-related risks and opportunities in line with its strategy and risk management process; disclose Scope 1, Scope 2 and, if appropriate, Scope 3 greenhouse gas (GHG) emissions and the related risks; and describe the targets used to manage climate-related risks and opportunities and performance against targets.

To underpin the recommendations, help guide current and future developments in climate-related financial reporting and assist organisations in making clear the linkages between climate-related issues and their governance, strategy, risk management, and metrics and targets, seven principles for effective disclosure have been developed.
Disclosures should:

- Represent relevant information;
- Be specific and complete;
- Be clear, balanced and understandable;
- Be consistent over time;
- Be comparable with companies within a sector, industry or portfolio;
- Be reliable, verifiable and objective; and
- Be provided on a timely basis.

Implementation

In most G20 jurisdictions companies with public debt or equity have a legal obligation to disclose material information in their financial filings including material climate-related information. The Guidelines recommend that all companies should provide climate-related financial disclosures in mainstream (ie public) annual financial filings and that individual companies report on their corporate governance approach to climate change, actual and potential climate impacts over the short-, medium- and long-term and strategies for tackling these impacts, as well as their overall approach to managing climate risk.

These disclosures should foster shareholder engagement and broader use of climate-related financial disclosures, thus promoting a more informed understanding of climate-related risks and opportunities by investors and others; will help ensure that appropriate controls govern the production and disclosure of the required information; and, in terms of the governance processes, will be similar to those used for existing public financial disclosures and are likely to be reviewed by the chief financial officer and audit committee, as appropriate.

The recommendations were developed to apply broadly across sectors and jurisdictions and should not be seen as superseding national disclosure requirements. If certain elements of the recommendations are incompatible with national disclosure requirements for financial filings, the organisations are encouraged to disclose those elements in other official company reports that are issued at least annually, widely distributed and available to investors and others, and subject to internal governance processes that are the same, or substantially similar, to those used for financial reporting..

For the full report go to: www.fsb-tcfd.org/publications/final-recommendations-report/

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ESG disclosure reporting

Revised JSE listing requirements

'A majority of Hong Kong-listed companies went beyond meeting the minimum environmental, social and governance (ESG) disclosure requirements in their first ESG report after the new ESG reporting regulations were introduced, but related investment was still limited, and the ESG reporting standards have room for improvement', according to a new survey by BDO.

The survey, *ESG Reporting of Hong Kong Listed Companies*, reviewed the ESG disclosures made by 300 Hong Kong Stock Exchange Main Board-listed companies for the financial year 2016. The review was based on seven core subjects: assurance, transparency, materiality, governance, resources use/GHG emission management, supply chain management and anti-corruption. Of the 300 companies surveyed:

- Seventy-seven per cent were first-timers to ESG reporting and over 60 per cent disclosed some social data not compulsory under the general disclosure requirement.
- Companies are reluctant to invest in ESG and only 40 per cent attempted to disclose their environmental data.
- The Utilities sector led with the highest score and the Materials and Information Technology sectors scored the lowest.
- In terms of data disclosure, the Energy, Financial and Utilities sectors were leaders and the Consumer Goods and Information Technology sectors lagged.

ESG reporting and risk management

Whilst over 80 per cent of the surveyed companies assessed their suppliers, less than 10 per cent provided support to enhance suppliers' ESG performance. In terms of anti-corruption, over 90 per cent had related measures and systems in place, but around 40 per cent did not disclose whether there were concluded corruption cases in the operating year. For ESG reporting to be effective it must be open and credible and assurance by a trusted independent third party can increase the reliability and credibility of the report. However, currently, only seven per cent of the surveyed companies sought independent assurance and only 45 per cent of the assurance was for the entire report, the rest was only for specific sections or data only.

Enhancing investment value and global recognition

ESG activities are commonly perceived as a cost burden by businesses, but the survey found that Hang Seng Corporate Sustainability Index constituent companies, which are highly rated for their ESG practices, tend to provide better investment returns in the long-term, suggesting a positive correlation between ESG achievements and investment return.

ESG performance, how well a company manages ESG risks and opportunities brought by major trends, such as climate change, and innate in the company's operations, is often included as part of criteria in rating a company's credit-worthiness and index constituent status. Over 60 per cent of companies surveyed invest in initiatives to reduce their resources and/or their GHG emissions. However, the survey revealed that only 30 per cent of companies disclosed data on GHG emission reduction amount or cost saving from related initiatives; only 27 per cent disclosed social data on occupational health and safety; and only 56 per cent disclosed corruption cases.

ESG reporting

Over 80 per cent of companies do not have a comprehensive strategy or an ESG committee or dedicated personnel to deal with ESG matters, and less than half engaged external stakeholders and conducted materiality assessment to identify key ESG risks. Some companies determined the material topics based merely on the views of their senior management. To improve ESG reporting the following recommendations were made:

- Establish ESG governance: develop a comprehensive ESG governance framework (an effective tool to help a company manage corporate risks) and conduct materiality assessment to help identify, assess and prioritise the ESG risks that are most relevant to the company's business and stakeholders.
- Report effectively on ESG: increase effectiveness and credibility of the ESG report by identifying compliance gaps and obtaining independent assurance.
- Establish brand integrity and enhance transparency: explain clearly ESG data collection methods and provide meaningful comparative data.
- Understand the material topics: identify the environmental and social issues that present a risk to the company while taking into consideration the concerns of external stakeholders through a formal engagement process.
- Start tracking and disclosing environmental data (environmental data disclosure will become a reporting requirement in 2017): develop a systematic approach in monitoring and analysing relevant data for meeting future reporting requirements.
- Highlight cost-saving ESG measures to quantify the positive impact of ESG achievements on the company's long-term value.

ESG reporting is a global market concern and standards of ESG reporting and the quality of disclosure of Hong Kong companies need to be raised to match international standards, to meet evolving legal requirements and increasing peer pressure and stakeholders' expectation for better ESG reporting and, ultimately, to help companies boost their investment value and investor confidence.

For the full survey results go to: www.bdo.com.hk/getattachment/Insights/Research/Survey-on-Environmental,-Social-and-Governance-(ES/(Final)-Executive-summary.pdf.aspx?lang=en-GB

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Global News

Executive pay in South Africa

In line with the King IV Report on Corporate Governance, the Johannesburg Stock Exchange (JSE) has made it compulsory for listed companies to have remuneration policies in place. A recent PwC report sheds light on executive remuneration in relation to the average employee, with a special focus on JSE executive pay across sectors. It looks at voting patterns on the remuneration policies and reports of JSE top-40 companies; remuneration voting patterns of South Africa's major institutional investors; and analysis of the most common reasons for voting against a company's remuneration policy or report.

Understanding and engaging shareholders

Shareholders seek a clear link between pay and performance and remuneration levels (and underlying policies) should be in line with the market. Many companies in the JSE top 40 receive a high measure of support from their shareholders on their remuneration policies or reports. However, some top-40 companies are multinationals with secondary listings on the JSE and are subject to different remuneration regulatory frameworks and others have shareholders who are less concerned with the quality of disclosures in the remuneration report. Also, the profile of shareholders differs, with some companies having more active shareholders (individual and institutional) than others.

Voting trends

Many institutional investors do not publicly disclose their reasons for voting against a remuneration policy or report (even less their reasons for voting in favour), opting, rather, to engage directly with the company concerned regarding their stance on the remuneration policy. That said, the most common reasons why South African investors voted in favour of, or against, remuneration policies are:

'Yes' vote - After engagement with the company, issues with the remuneration policy were adequately explained; the company committed to engage with shareholders over future performance conditions; and guaranteed pay is benchmarked to the median and STIs and LTIs are based on financial performance conditions.

'No' vote - Insufficient disclosure; LTIs have no performance conditions; remuneration policy is inconsistent with best practice; and levels of remuneration are excessive.

Specific issues listed by shareholders included: remuneration should reflect both short- and long-term performance of the business, in isolation as well as relative to peer group companies facing similar economic conditions; excessive pay levels, when compared to comparator companies, will not be supported; guaranteed pay levels should be supported by a strong performance management system; executive increases should be in line with general company increases; participation levels in benefits should be stated and should be capped; pension arrangements that differ from those of general employees should be substantiated; no element of variable pay should be pensionable; and executive base pay should be proportionate to short-term incentive.

For the full report go to: www.pwc.co.za/en/publications/executive-directors-report.html

Corporate transparency levels still low

'Disclosure practices and levels of transparency among corporates still fall short of expected standards', according to the Malaysian Institute of Corporate Governance (MICG). The MICG inaugural report, *Transparency in Corporate Reporting - Assessing Malaysia's Top 100 Public Listed Companies*, assesses the Bursa Malaysia's top 100 public listed companies by market capitalisation as of 30 December 2016. The study was based on publicly available information about each company's policies, through annual reports, websites and other resources and measures the availability of publicly accessible information on a company based on three criteria: its anti-corruption programme, organisational transparency and sustainability.

The study revealed that 15 companies scored more than 50 per cent in all three criteria, 11 companies scored full points in at least one of the three criteria and 64 companies scored less than 50 per cent overall. Government-linked companies, overall, had higher scores than multinational corporations and family-run public listed companies, with average scores of 5.8, 5.5 and 4.1, respectively.

Of the three areas studied the anti-corruption criterion had the lowest score, 13 of the companies scoring zero. The report found that only two of the 100 companies studied had disclosed an anti-corruption training programme for both employees and directors, while only three companies disclosed regular monitoring of their anti-corruption programmes. It also found that only 18 per cent declared a prohibition of political contributions or a requirement that such contributions were publicly disclosed and 37 per cent had a policy on gifts, hospitality and expenses.

In terms of organisational transparency, there were unclear succession planning measures among most of the firms, while in terms of sustainability it was found that there was a general disregard for human rights in business. The three listed subsidiaries of national oil corporation Petronas topped the list of companies that disclosed the best transparency policies.

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Chinese companies improve corporate governance

'International investors continue to view the Asia Pacific region as a really good investment opportunity', according to a survey by Institutional Investor Research. 'This year we saw a real investor focus on Chinese companies at the expense of some more established markets like Korea and Australia, and their efforts to be transparent and trustworthy for domestic and international investors alike are being recognised.'

A total of 2,510 companies across 18 sectors were assessed based on six core attributes: accessibility of senior executives, constructive conference calls and meetings, well-informed and authoritative investor relations, quality corporate documents, quick response to requests and timely financial disclosures. According to the survey more mainland Chinese companies climbed to the top of Institutional Investor's annual rankings, edging out some of last year's winners from India, Southeast Asia and Australia.

Of the 18 sectors, Chinese companies took the top spot in eight industries while Hong Kong companies took the top spot for six (maintaining its historical status as a financial and business centre). The top six companies in the Internet sector all came from the Chinese mainland. In 2016, four companies captured first place in every single category in which they were eligible to compete: in 2017, however, only one company took first place in all four categories Taiwan Semiconductor Manufacturing Corp.

India has dominated the Healthcare and Pharmaceutical sector, but this year three Chinese mainland companies took the top three spots. However, India and Taiwan maintained their strong presence in this year's tech sector rankings: India maintaining its strength in the Technology/IT Services and Software sector and Taiwan dominating the Technology/Semiconductor space.

All major government-owned Chinese companies will be turned into limited liability companies or joint-stock firms by the end of 2017, a major reform that will help corporate governance and increase transparency. That said, Chinese companies are doing better in upholding local and international corporate governance standards and engaging with investors in a transparent and meaningful way.

Conflict and tension in the boardroom

'Board conflict is among the thorniest problems company secretaries or directors have to deal with, taking in everything from strategic disputes to personality clashes. Conflict can be damaging, but tension is considered to play a positive role in the boardroom', according to a poll from ICSA: The Governance Institute and recruitment specialist The Core Partnership. Fifty-seven per cent of company secretaries have had to deal with conflict and tension in the boardroom in the past year and 36 per cent have not. Of those who did, two-thirds said it had been constructive in the end.

Unconstructive disputes are likely to remain unresolved beyond a given board meeting, with one respondent describing an unresolved clash as an 'elephant in the room' situation, with no end in sight. When asked whether such conflict and tension could be usefully resolved, many reported that resolution often involved the departure of one of the board members. However, many highlighted the role of discussion in settling disputes.

Talks outside the boardroom were also viewed favourably. To settle conflict, one person recommended 'discussion outside the meeting and the decision on the controversial issue deferred' until next time, while another said tension should be eased 'through side discussions and mediation outside the boardroom'. One described the process as 'a lot of offline discussions'. These strategies deal with conflict as it arises but some respondents focused on longer-term management of tension and conflict.

The findings also showed both the chairman and company secretary as playing an important part in managing tension and conflict. Some respondents believed that the culture implemented by the CEO and the skill of the Chair ultimately ensures whether tension or conflict are present in the first place and whether issues are resolved constructively. Others agreed, emphasising the importance of the Chair, CEO or senior independent director (SID). Many also saw a role for the company secretary in settling disputes, though some believe that the company secretary should just fulfil a neutral middleman role, and also provide an ear to all members of the board and understand their grievances and issues, information that should be fed back to the Chair.

Though some saw a lack of conflict as healthy, diverse opinions were not always portrayed negatively. Tension can constructively challenge the board to consider the issues at hand and boards with a broad skill set and diversity of opinion can facilitate better discussions and lead to better decision-making.

For more information go to: www.icsa.org.uk/knowledge/governance-and-compliance/indepth/comment/quick-question/have-you-dealt-with-boardroom-tension-or-conflict-in-the-past-year

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Socia Round Tables

Joining the board

There is something of a rite of passage in joining your first board. You may have interacted with boards over many years but the first time you actually become a board member (whether as executive or non-executive) there is still a lot to learn. And some boards really don't help themselves to get the best out of new board members. It's not just about a formal induction process it's also about helping new members understand the culture and unwritten rules so that they can become effective fast.

To the newcomer, although the purpose of the board may be clear, the level of knowledge of its operation is quite different. Boards can seem like a 'club' until you achieve full membership. Board meetings can be a challenge, too much paperwork, a clash of egos, lots of politics and no clear decisions! At Socia we meet many executives that have found joining a board to be a daunting experience and so in this third of these board roundtable discussions we brought a group of board members together to share their experience. How can new board members avoid the pitfalls and become effective fast?

All new board members need to understand the complex human dynamics of the board...

Joining a board is a significant adaptation for anyone and the time and effort required shouldn't be underestimated. Some new board members commented that it can take nearly twice as much time commitment to prepare and to be effective as a board member in the first year than would be expected for an experienced member in the long run. So individuals should look sceptically at what time is expected from them when they are initially offered the role.

New board members need a proper induction period to fully understand the board's formal and informal ways of working, in particular, the best ways of communicating with and influencing others outside board meetings.

All new board members need to understand the complex human dynamics of the board, and as a new executive director you will need to be ready for changes in how others throughout your business will deal with you. Everything that you do as a board member will be amplified and scrutinised by others around the business, the stakes are much higher.

Outside the boardroom, new directors will experience colleagues acting differently. One roundtable participant described it as 'my voice getting so much louder overnight, with other people acting on the slightest thing that I said'. Your influence and your level of perceived authority changes instantly – for good or ill. But there is no better forum to gain a truly broad understanding of business.

Conflict is inevitable

All boards have in-built tensions. The executive and non-executive roles are designed to encourage scrutiny and better decision-making, but this often comes with differences in priorities and perceptions of risk. So, new board members need to be able to live and deal with this conflict without falling out with colleagues. Here the contribution of the chairman is critical. New board members need to understand how the chairman likes to operate and be clear on the written and unwritten ground rules that drive board behaviours. This might include understanding the coded language that your board colleagues use in meetings. As one new board member put it – 'you have to understand how people around the board table have learned to disagree and yet remain productive, and find ways to keep listening to each other and making progress even when there is not complete alignment'.

What helps?

Some new non-execs reported the loneliness they experienced at the beginning of their tenure. New executive directors talked of the importance of preparing for or rehearsing their likely interaction in early board meetings with their own team to keep that connection strong. In both cases part of this preparation is thinking through a few good 'killer' questions (and answers) in advance that demonstrate that you are present and have a contribution to make.

But most important is to be able to ask for help. Identifying a sponsor or mentor or simply a friend on the board is potentially very useful. They can provide the advice and guidance to ensure that your early impact is positive and you are operating at the right level. Talking to to the chairman, the cosec and the SID is also a good routine to get into. Understanding their expectations, for you and for the board as a whole, is a good place to start and can initiate the forward-looking conversations which will begin to access their experience and advice. Getting informal feedback from others after board meetings is also useful in the early days so that you learn from their perception of your performance and develop the style of your contribution accordingly.

But possibly most important, talk to others in the business outside the board – get out of the bubble and play your part in ensuring that the board is delivering on its core purpose. In that way you can retain your perspective and bring the added value and freshness of approach that only a new board member really can.

In our next boardroom dinner conversation we'll tackle possibly the most crucial role on any board. We're bringing together a group of board chairmen to discover what they think about their role and what makes effective chairmanship.

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Feature

GDPR and the cyclist

Sophie Johnson considers the worrying lack of preparedness by more boards for GDPR.

As a former professional cyclist, I am acutely aware that success for any top-level athlete isn't so much about raw talent as it is about planning. Professional athletes have to be professional planners; it isn't just physical conditioning that makes the difference between success and failure, a huge amount of research goes into planning for every eventuality, mapping different strategies and exploring various scenarios for every event.

This baffles me because roadmaps for preparing for implementation have been available for years.

Likewise for today's CEO and boards, a key part of the role is helping to navigate their organisations through change and transformation and where possible to gain competitive advantage by being ahead of the curve. Here, planning plays a key part. What challenges and obstacles are around the corner and what resource and commitment is required from senior leadership to ensure the business is agile?

At Wilton & Bain we have undertaken two pieces of research on the General Data Protection Regulation (GDPR) in recent months to find out what companies are doing to be compliant and I have to say that the findings surprised me. Specifically, just how little planning has gone into GDPR in many companies and how many still have no plan at all.

This baffles me because roadmaps for preparing for implementation have been available for years. The legislative proposal for GDPR was published back in 2012. It became law on 25 May 2016 and companies were given two full years to ensure their compliance prior to its implementation in May 2018. More than enough time, in other words, for organisations to devise a plan, even if they haven't yet started to implement it.

Yet this week alone, I have had three conversations with CIOs (yes, that's Chief *Information* Officers, not CEOs) who are not even aware of GDPR, let alone its impact for the systems and data they are meant to be responsible for. Even fewer have made other key executives aware of the governance implications of GDPR or the impact it is likely to have on the business.

Penny Hayes has already spelled out these implications in the July 2017 Issue 277 of *Governance*, so I won't repeat them here. But I'm still left contemplating why businesses don't appear to be approaching GDPR with a level of diligence and planning that one might expect, based on our own data.

As an example, in August, 85 per cent of enquiries we received from clients were related to GDPR. Moreover, we actually had more GDPR enquiries in August than July, indicating that demand for GDPR expertise hasn't reached its peak yet.

To find out more about where organisations are with GDPR, we polled our network of more than 800 interim executives about their experience of GDPR implementation on the ground. What we found is that six out of 10 (62 per cent) of interim managers working on assignment are not confident the organisation they are engaged with will be GDPR compliant by 25 May 2018, and fewer than half (45 per cent) think that the senior leadership team appreciate its cultural or governance implications.

What this implies, too, is that very few organisations view GDPR as an opportunity, rather than a burden. Because above and beyond the governance issues, GDPR represents an opportunity for corporations to become better data stewards and more aware of the responsibilities that they have to their consumers. In other words, as Steve Wood, the UK ICO's Deputy Commissioner for Policy has argued, it can help to build trust between business and its customers by addressing their privacy and data protection concerns.

We are also finding that there can be real benefits by taking a strategic approach and mapping GDPR compliance to broader IT transformation projects. For example, moving a legacy data storage system to the cloud represents an excellent opportunity for data cleansing and anonymisation or pseudonymisation, as well as establishing compliant procedures and governance processes that can be rolled out to the rest of the business.

When it comes to an effective GDPR plan, a crucial part of this process is identifying capability gaps. If you don't have people with the right expertise to steer you to GDPR compliance, what are you going to do about it?

As an athlete, I never hesitated in asking for help or seeking out the best coaching and support talent to help me achieve my goals. This was because I was 100 per cent focused on achieving my objectives. So if our findings show that almost half of organisations feel they don't have the internal capability needed to deliver a successful GDPR programme, will they reach out for help or will they continue to pretend that the problem doesn't exist until it is too late?

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Feature

Ruminating on remuneration

Vanessa Jones looks at the UK Government's response to the recent consultation on corporate governance and specifically the position regarding executive pay.

The Government's response to the corporate governance Green Paper consultation [1] was published this summer. Three specific aspects of corporate governance were targeted:

- executive pay;
- governance in large privately-held businesses; and
- strengthening the employee, customer and supplier voice.

Many had hoped for some fresh and innovative thinking followed by some well targeted reforms. In truth the Government's response proposes reasonably modest and incremental changes which will do no harm and may do some good but do not appear to deliver the significant changes which many had hoped for.

By way of update to summarise the key proposals:

Executive pay

- The introduction of pay ratio reporting comparing the remuneration of the CEO with average UK employee pay for quoted companies;
- The Investment Association (IA) will establish a public register to ensure that there is greater visibility for quoted companies who encounter significant shareholder opposition to levels of executive pay;
- The practice of share buybacks will be reviewed to ensure that they cannot be used artificially to hit performance targets and inflate executive pay.

Governance in large privately-held businesses

- The Financial Reporting Council (FRC) to work with significant others to develop a voluntary set of corporate governance principles for large private companies;
- Private companies of a significant size (the initial view is that this would be companies with more than 2,000 employees) to disclose the corporate governance arrangements that they have in place in the annual Directors' Report.

Strengthening the stakeholder voice

- All companies of significant size (private and public) to explain how they comply with Companies Act 2006, s 172 requirements;
- The FRC to develop a new UK Corporate Governance Code (UKCGC) principle to strengthen the stakeholder voice: either a designated non-executive director; a formal employee advisory council or a director from the workforce;
- The Institute of Chartered Secretaries and Administrators (ICSA) and the IA will produce practical guidance on ways that company boards can engage with employees and other stakeholders.

When will this happen? The FRC intends to consult on amendments to the UKCGC in late Autumn 2017. The Government intends to lay before Parliament draft secondary legislation before March 2018. Overall the current intention is to bring the package of reforms into effect by June 2018 to apply to company reporting years commencing on or after June 2018.

So where does this leave us on executive pay? In the public eye the governance of pay has become a much wider and a more systemic issue than being restricted to the listed sector. Increased transparency and openness are being called for in many sectors and public attitudes are changing and hardening to perceived pay inequality. Executive pay has been a key factor in public dissatisfaction with large businesses as well as a source of frustration to UK investors on and off for over two decades. There has been no shortage of regulatory initiatives from very different governments over the years and some would contend that the regulatory outcomes in remuneration governance have been very disappointing.

The common themes surrounding remuneration identified over the last couple of decades remain a constant and, despite the rhetoric, the Government's proposals only go a little way to address these core concerns:

- Pay being high, escalating quickly and not related to performance;
- Pay encouraging misaligned incentives and encouraging short-term behaviours;
- Pay being determined by a complacent compensation/ remuneration committee structure.

These themes are all too evident in all organisational types not only for those working in the listed sector which has seen most of the regulatory focus to date. The Corporate Governance Reform Green Paper issued in November 2016 and the subsequent report issued in March 2017 had a focus on executive pay and possible reforms. Many hoped for a different and fresh approach. However, we now have the Government response and plans for strengthening the existing executive pay framework in light of the Green Paper consultation and it all seems a little predictable and a little less than what was expected. In summary on executive pay the Government intends to:

1. Invite the FRC to revise the UK Corporate Governance Code (UKCGC) to:

- be more specific about the steps that premium listed companies should take when they encounter significant shareholder opposition to pay and awards;
- give remuneration committees a broader responsibility for overseeing pay and incentives across their company using pay ratios to help explain their approach where appropriate;
- extend minimum vesting and post-vesting periods for executive share awards from three to five years to better encourage long-term outcomes in setting pay.

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2. Introduce secondary legislation to require quoted companies to:
- Report annually the ratio of CEO pay to the average pay of their UK workforce with a narrative reporting element explaining year on year changes;
- Provide a clearer explanation in remuneration policies of a range of potential outcomes from complex, share-based incentive schemes.

3. Invite the IA to maintain a public register of listed companies encountering shareholder opposition to pay awards of 20 per cent or more, along with a record of what these companies say they are doing to address shareholder concerns.

Has transparency increased governance or simply fuelled pay escalation?

Has transparency increased governance or simply fuelled pay escalation? The Government response paper states that: 'FTSE 100 CEO total pay has increased from an average of around £1m in 1998 to over £4m today, fuelling a widespread perception that boardroom remuneration is increasingly disconnected from the pay of ordinary working people'. Well it is not as if there have not been enough regulatory changes and increased transparency to remuneration reporting between 1998 and today is it? The fact remains that this topic engenders as much widespread public concern now as was the case in the mid 1990s over what was seen then as excessive amounts of remuneration paid to directors of quoted companies and newly privatised companies. We will remember 'Cedric the Pig', the nickname of Cedric Brown, one-time chief executive of British Gas, who enjoyed a 75 per cent pay rise in 1994 at a time when the company was making people redundant and lead to a memorable AGM in 1995. Can we really say that behaviours exhibited in 2017 represent an improvement to remuneration governance? In reality Mr Brown's comparative remuneration, in hindsight, looks fairly modest.

For those who have been looking at executive pay escalation over the years it is hard to detect any real and meaningful change in remuneration governance behaviour in the listed sector despite the host of initiatives designed to improve remuneration governance. It is equally hard to envisage that these latest proposals will lead to any meaningful change in behaviours. Granted that we have more publicly available information available to shareholders and stakeholders but is that information acted on and does it lead to the companies being held to account? Only time will tell whether the latest changes may bring about behavioural changes.

Wider than the listed company space this summer of 2017 has seen wide public discussion of pay levels in other organisation types. The debate about the pay levels at the BBC were perhaps not so interesting in terms of quantum but critically highlighted a considerable gender pay gap which surprised many. University vice-chancellors are the latest to come under the microscope with a proposed series of measures to address and curb perceived spiralling rates of pay. The Universities minister has called for 'transparency and openness' and new guidance on the role and independence of pay committees in the University sector to clampdown on accelerating pay increases among higher education leaders.

High pay awards for listed company executives have always been a controversial issue and subject to much media interest. Many quite rightly ask the question: what are remuneration committees doing when certain remuneration practices are approved and implemented? The same is now being asked in other sectors.

It is therefore a good development that the FRC is being asked to re-consider what we are asking of listed company remuneration committees. We shall have to wait and see what the FRC recommends by way of revision in this space. Remuneration committees often strive for an atmosphere of collegiality but the best committees are those whose members are not afraid to disagree. Successful remuneration committees comprise directors with unique perspectives who have the ability to make decisions as individuals.

So where does this leave us? At least we have clarity about the direction of travel and the timescale is clear. There will be public consultations from the FRC and there will be work beginning on the voluntary code for private companies. The detail of these proposals will need to be followed carefully by those in the sector and appropriate changes to internal governance mechanisms made where necessary. No doubt there will be a new 'cottage industry' formed around the calculation of the pay ratios that will be required of listed companies and there will be more accessible and readily available information in the public domain than ever before courtesy of the IA public register. As ever in corporate governance developments a case of 'watch this space'.

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[1] *https://www.gov.uk/government/consultations/corporate-governance-reform*

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