

Cambridge In-House Counsel Day 2025



Mishcon de Reya

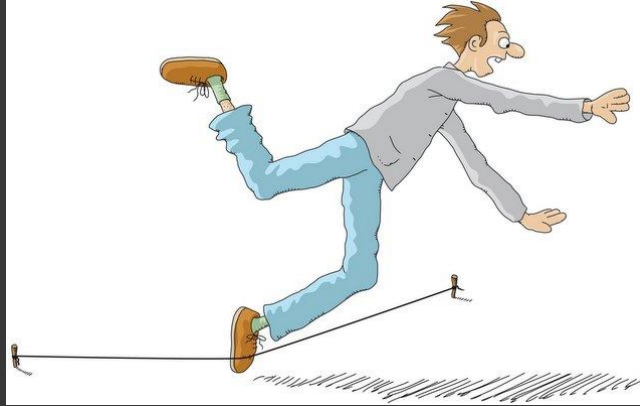
It's business. But it's personal.

Welcome.

SESSION 1:

Health & Safety 'Accountability'

Welcome to the world of H&S....but what is it?





What does Health and Safety have to do with me?

Corporate H&S duties

Section 2

Duty to
employees

- Duty to “ensure” the health, safety and welfare of employees

Section 3

Duty to non-employees

- Duty to “ensure” the health and safety of non-employees

Section 4

Duty of
controller of
premises

- Duty of person who has, to any extent, control of premises to ensure premises, access and egress of premises and any plant or substance is safe and without risks to health (HSWA 1974)

“So far as is reasonably practicable”



Individual H&S duties

Duty to take reasonable care of **self** and **others** affected by work

Section 7

Duty of employees

Where an offence...has been committed with the **consent, connivance**...or attributable to any **neglect** on the part of any director, manager...or a person who purports to act in that capacity, he/she as well as the company shall be guilty of that offence

Section 37

Liability of directors and senior managers



Large

Turnover or equivalent: £50 million and over

	Starting point	Category range
Very high culpability		
Harm category 1	£4,000,000	£2,600,000 – £10,000,000
Harm category 2	£2,000,000	£1,000,000 – £5,250,000
Harm category 3	£1,000,000	£500,000 – £2,700,000
Harm category 4	£500,000	£240,000 – £1,300,000
High culpability		
Harm category 1	£2,400,000	£1,500,000 – £6,000,000
Harm category 2	£1,100,000	£550,000 – £2,900,000
Harm category 3	£540,000	£250,000 – £1,450,000
Harm category 4	£240,000	£120,000 – £700,000
Medium culpability		
Harm category 1	£1,300,000	£800,000 – £3,250,000
Harm category 2	£600,000	£300,000 – £1,500,000
Harm category 3	£300,000	£130,000 – £750,000
Harm category 4	£130,000	£50,000 – £350,000
Low culpability		
Harm category 1	£300,000	£180,000 – £700,000
Harm category 2	£100,000	£35,000 – £250,000
Harm category 3	£35,000	£10,000 – £140,000
Harm category 4	£10,000	£3,000 – £60,000

Medium

Turnover or equivalent: between £10 million and £50 million

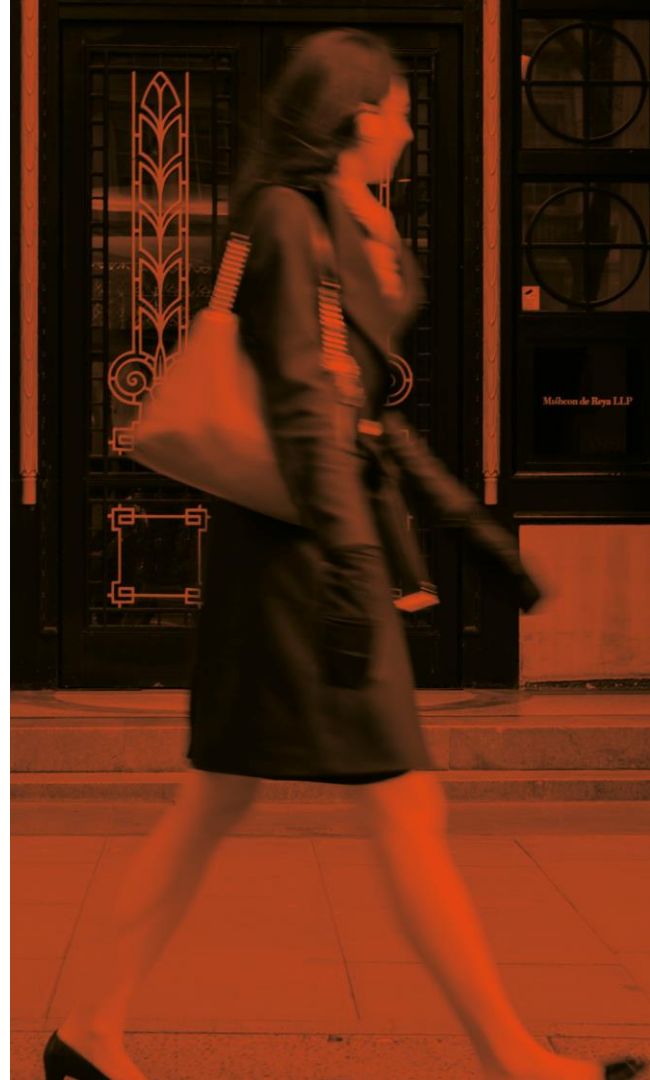
	Starting point	Category range
Very high culpability		
Harm category 1	£1,600,000	£1,000,000 – £4,000,000
Harm category 2	£800,000	£400,000 – £2,000,000
Harm category 3	£400,000	£180,000 – £1,000,000
Harm category 4	£190,000	£90,000 – £500,000
High culpability		
Harm category 1	£950,000	£600,000 – £2,500,000
Harm category 2	£450,000	£220,000 – £1,200,000
Harm category 3	£210,000	£100,000 – £550,000
Harm category 4	£100,000	£50,000 – £250,000
Medium culpability		
Harm category 1	£540,000	£300,000 – £1,300,000
Harm category 2	£240,000	£100,000 – £600,000
Harm category 3	£100,000	£50,000 – £300,000
Harm category 4	£50,000	£20,000 – £130,000
Low culpability		
Harm category 1	£130,000	£75,000 – £300,000
Harm category 2	£40,000	£14,000 – £100,000
Harm category 3	£14,000	£3,000 – £60,000
Harm category 4	£3,000	£1,000 – £10,000

Practical Legal Tips to reduce exposure to prosecution



Top Tips?

- **Culture / Attitude of the business**
- **Systems & Accepted Practices**
 - *Better interaction between relevant departments (H&S advisors / consultants, Board, Senior Leadership, Risk teams)*
- **Selection and supervision of external consultants / third parties**
 - *Accreditation / competence*
- **Senior Executive Training**
 - *IOD / HSE Guidance (Leading H&S at Work) - <http://www.hse.gov.uk/pubns/indg417.pdf>*
- **Legal Review of Company Documents**
 - *H&S Policy, Job Descriptions, Gap Analysis*
- **Incident Response Protocol**
 - *What does yours look like?*
 - *Use of Legal Privilege*



Contact

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SESSION 2:

Competition Law Starter Pack

Welcome.

Competition Law

1. Legal Framework

1. What growing companies should watch out for:
 1. Cooperation agreements
 2. Information exchange
 3. Exclusivity arrangements & non-competes
 4. Restrictions on distribution/licensing
 5. AI and algorithms

Legal Framework

- UK: Competition and Markets Authority / EU: European Commission
- Competition law applies to companies of all sizes
- Competition law prohibits:
 - **Agreement** between businesses that has as its object or effect a restriction of competition (**Chapter 1 Prohibition / Article 101 TFEU**)
 - Includes certain kinds of information sharing and coordination
 - **Abuses** of a dominant position (**Chapter 2 Prohibition / Article 102 TFEU**)
 - **Certain mergers/joint ventures** that will lead to a substantial lessening of competition (**Enterprise Act 2002 / EU Merger Regulation**)



Cooperating with competitors

- Agreements between competitors are almost always scrutinised closely
- E.g. JV agreements, joint production agreements, joint purchasing agreements or joint R&D agreements
- Cooperation arrangements must not:
 - Fix purchase or selling prices, or other conditions of trade
 - Limit or control production, markets, technological developments or investment
 - Divide markets
 - Have an anti-competitive “effect”
- Beware Joint Ventures being “full function”.



Always beware risk of information sharing!

Information Sharing



Information sharing refers to the sharing of competitively sensitive information and/or digital data between actual or potential competitors.



Can be direct or indirect (ie, through third parties)



Any information inflow to and outflow from companies should be managed with utmost care



The CMA recently fined four banks £100m over gilt information sharing

What is “information”?

- Information which is likely to **reduce competitive uncertainty** in a market or is **capable of influencing** the competitive strategy of others
- Current and Recent pricing – most dangerous to share

“Information” includes **physical and digital data** and means all types of information including:

Raw data
That has been prepared and validated

Information about customers

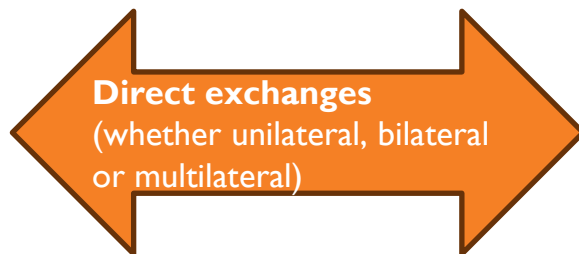
Details about production capacities

Market strategies

Cost information

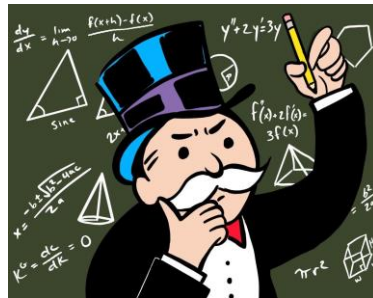
What Is An Exchange Of Information?

- “**Exchange**” includes:



- The **frequency** of the exchange is also relevant.

AI and algorithms



- AI and algorithms are a key focus of Competition regulators
 - Algorithms can in part be used in anti-competitive ways, such as to facilitate collusion, manipulate consumers, or reduce competition.
 - Use of **algorithms** to **monitor competitors' prices**:
 - **Self-preferencing**
 - **Market manipulation**
 - **Exclusionary practices**
 - **Data exploitation**
- **Example: Online Poster Sales** (price coordination for poster sales on Amazon)
Topkins US and GB Eye Trod UK

Restrictions on distribution/licensing

- **Chapter I also applies to “Vertical Agreements”:** Agreements between companies at different levels of supply chain, including distribution and licensing agreements
- Potentially anticompetitive restrictions in licensing/distribution agreements:
 - Pricing restrictions
 - Restrictions on Territories (passive sales, and some active sales)
 - Restrictions on Customers or Customer Group (passive sales, and some active sales)
 - Methods of sale (Online/ Restrictions on AdWord bidding)



What to do if you are the victim of anticompetitive conduct?

Complain to a regulator

- Investigation could bring infringement to an end
- Potentially very high fines (but no damages for your business)
- Directors can be disqualified
- Can be very disruptive for the infringer
- Relatively little work and cost for victim

Private action

- Standalone
- Follow-on
- Damages
- More disruptive and expensive for the victim

...And What If Your Business Commits An Offence?



- **Prevent infringements:**
 - Ensure you have a strong compliance policy in place (regular monitoring and audits)
 - Conduct regular internal training.
- **If your business has engaged in anti-competitive conduct:**
 - Consider making a leniency application.
 - Comply with the investigation.
 - Consider settlement.
- **Consider the interplay between public and private enforcement.**
- **Ensure staff are trained to handle Dawn Raids**

Thank you.

Mishcon de Reya

This presentation is intended only as a general statement of the law and no action should be taken in reliance on it without specific legal advice.

SESSION 3:

Reputational Resilience: Reputation Protection and Crisis Management

FIGURE C

Global risks ranked by severity over the short and long term

"Please estimate the likely impact (severity) of the following risks over a 2-year and 10-year period."

Risk categories

- Economic
- Environmental
- Geopolitical
- Societal
- Technological

2 years

1 st	Misinformation and disinformation
2 nd	Extreme weather events
3 rd	State-based armed conflict
4 th	Societal polarization
5 th	Cyber espionage and warfare
6 th	Pollution
7 th	Inequality
8 th	Involuntary migration or displacement
9 th	Geoeconomic confrontation
10 th	Erosion of human rights and/or civic freedoms

10 years

1 st	Extreme weather events
2 nd	Biodiversity loss and ecosystem collapse
3 rd	Critical change to Earth systems
4 th	Natural resource shortages
5 th	Misinformation and disinformation
6 th	Adverse outcomes of AI technologies
7 th	Inequality
8 th	Societal polarization
9 th	Cyber espionage and warfare
10 th	Pollution

Source

World Economic Forum Global Risks
Perception Survey 2024-2025.

Media scrutiny – Beyond unlawful to “*unethical*”

Cop27 climate summit's sponsorship by Coca-Cola condemned as 'greenwash'

Plastics campaigners call it 'astounding' that multinational they say is world's top polluter has sponsored key UN climate meeting

The Guardian

Revealed: world's biggest meat firm appears to have avoided millions in UK tax

Exclusive: major supplier to brands including KFC and Nando's used offshore companies allowing them to reduce UK tax payments, investigation suggests

The Guardian

KPMG boss Bill Michael quits after 'stop moaning' row

© 12 February



Bill Michael told consultants to "stop moaning"

The UK chairman of KPMG has resigned following a row over comments he made at a meeting on Monday.

Bill Michael had told consultants to "stop moaning" about the impact of the pandemic and lockdown on people's lives, and to stop "playing the victim card".

B B C

NEWS

Reputation Protection



Before

- Crisis team and protocols
- Designing in confidentiality
- Horizon scanning



During

- Advising on and/or liaising directly with media
- Stakeholder engagement



After

- Seeking apologies/corrections
- Rebuilding brand/image
- Advising on investigations

Avenues of scrutiny

- **Adverse media** (professional as well as e.g. customers/bloggers/campaigners) of actions/posts/statements/conduct (including public and private conduct in both personal and professional capacity)
- **Unforeseen incidents/actions** which "*surface*" e.g. allegations of harassment or other misconduct
- **Past/current action/conduct** re diversity, ESG, etc., including allegations of "*greenwashing*" or else insufficient action.
- **Targeted criticism**: activists, campaign groups, anonymous trolls
- **Employees** e.g. negative reviews on Glassdoor



The Wheel of Risk



Hostile journalistic enquiries

- Be clear internally as **who interacts with the press** and **how/when**.
- Confirm the journalist's details. Ask for **detailed questions/allegations in writing**.
- **Do not respond immediately/off the cuff**.
- Seek to agree a **reasonable deadline** and a **reasonable right of reply**.
- Make sure you – and they – understand what is meant by “***off the record***”.
- Consider a “***statement for publication***”.
- Make use of **editorial/broadcast guidelines on privacy/harassment**.

Confidentiality

- Actively manage flow of confidential information to employees, counterparties etc.:
 - Don't assume confidentiality will be respected, or that leaks are inevitable
 - Minimise those involved in negotiations/key meetings
 - Draft robust confidentiality clauses e.g. in NDAs, lock-up agreements, debt documents
 - Ensure key systems (IT, cyber, buildings) are secure
- React appropriately to breaches of confidentiality:
 - Investigate and address leaks
 - Challenge reporting/dissemination of confidential information



Specific Risks

- **Insider risk** e.g. that disgruntled employees, even spies, will leak information or brief against the company
- **Historic grievances** e.g. re remuneration or disciplinary procedures, aired/used by individuals waiting for an opportunity to attack
- **Poor/no social media or press engagement policies**
- **Who has an axe to grind?** Scrutiny/criticism by creditor groups/activists/bloggers/journalists with a longstanding interest in the business/sector
- **Allegations of bad practice/misconduct** e.g. that professional fees are too high



Crisis Planning

1. Know your vulnerabilities, and your enemies.
2. Make sure your advisers know your business.
3. Have a detailed **crisis plan** and a **crisis team** of sufficient authority ready to act.
4. When crisis strikes:
 - Don't delay!
 - Communicate with key stakeholders (consumers, suppliers, partners, employees, regulators, communities etc.)
 - Form a strategy quickly.
 - Seek external advice as necessary.
5. Practise, practise, practise.
6. Learn from your mistakes.
7. Be realistic – choose your battles wisely.



Questions?



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Break.

SESSION 4:

In too deep?

How to guard against deepfake
fraud

WPP boss targeted by deepfake scammers using voice clone

Mark Read says criminals set up Microsoft Teams call with senior executives in unsuccessful attack



UK engineering firm Arup falls victim to £20m deepfake scam

Hong Kong employee was duped into sending cash to criminals by AI-generated video call

● [Business live - latest updates](#)



Arup confirmed that fake voices and images were used in the fraud. Photograph: Andrew Brookes/Getty Images/Image Source

The British engineering company Arup has confirmed it was the victim of a deepfake fraud after an employee was duped into sending HK\$200m (£20m) to criminals by an artificial intelligence-generated video call.

AI deepfake scams hit FTSE 100 bosses

Jess Jones
TMT Reporter

Share



An image – often sourced from the company's official website – can accompany the message and the scam can escalate with a computer-generated voice note.

A surge in deepfake technology is helping fraudsters impersonate FTSE chief executives with alarming ease, leading to a rise in sophisticated "CEO scams" that often go unreported.

At least five FTSE 100 companies and one FTSE 250 firm have fallen victim to these kinds of attacks this year. High-profile targets include Octopus Energy, discoverIE and the chief executive of WPP, who revealed in May that his voice was cloned on a company call.

Ferrari CEO impersonated by AI in deepfake scam attempt – report

A Ferrari executive has stopped an elaborate scam in its tracks – but the incident is a warning to the automotive industry to be cautious.

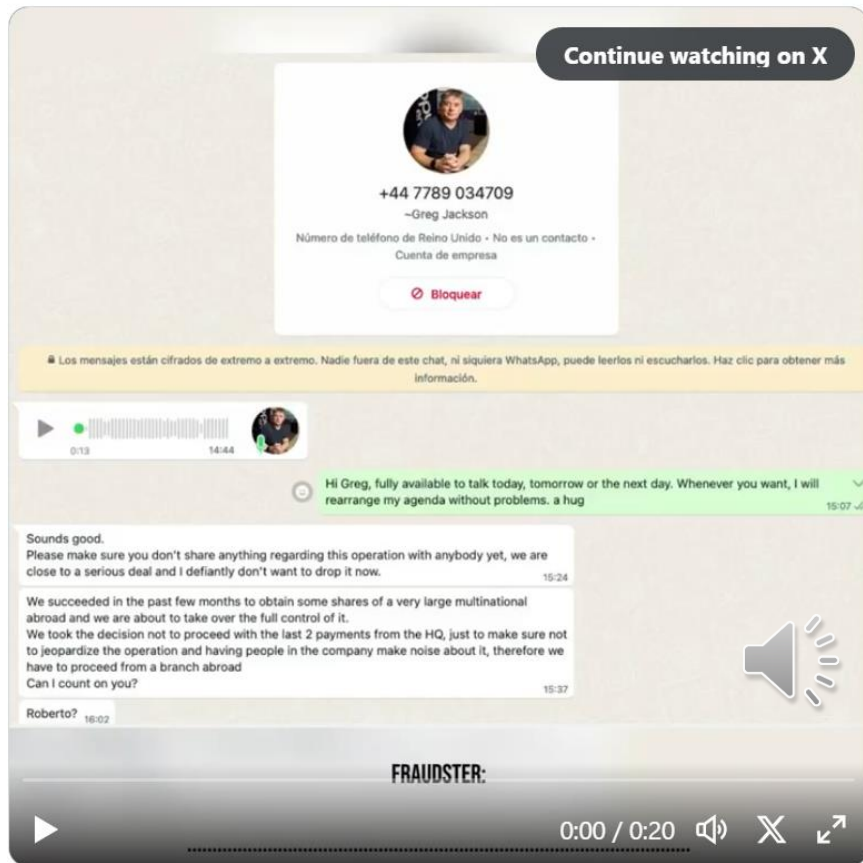


Ben Zachariah 12:59 30 July 2024

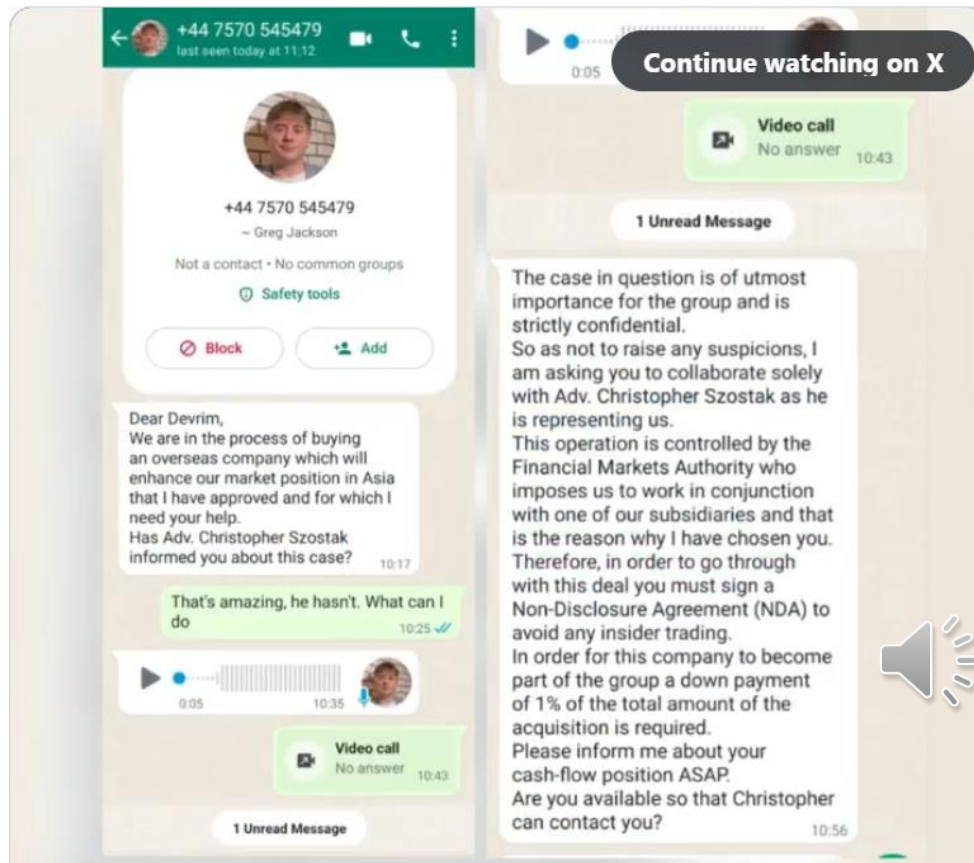
5 comments 4 shares



+ 3 Photos



11:58 AM · Feb 8, 2024



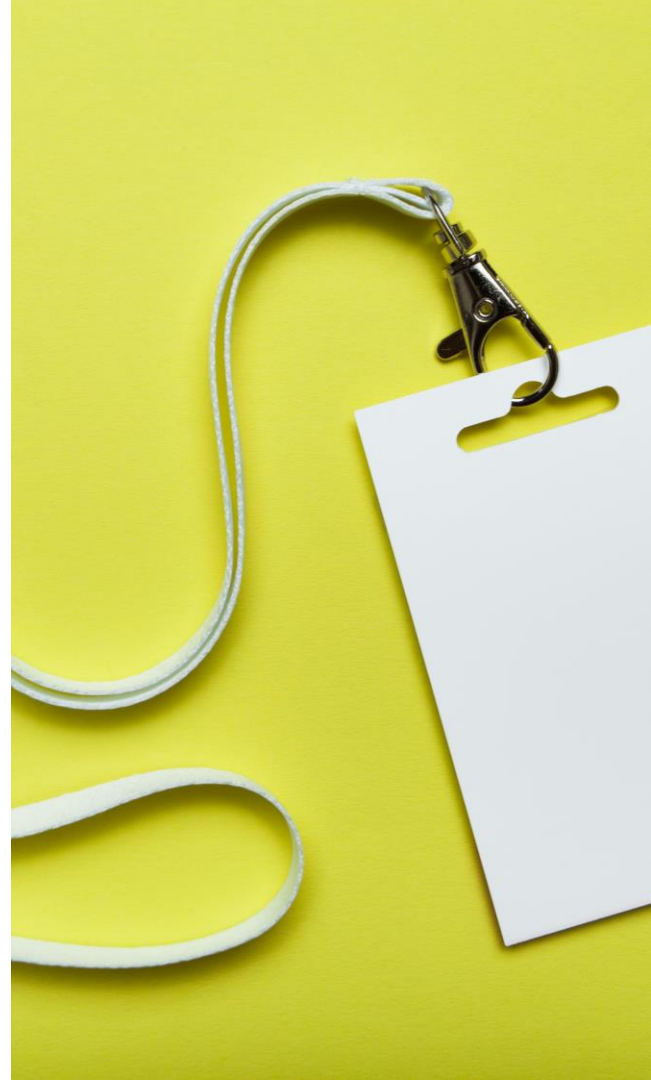
Tell-tale signs

- “Urgent”
- “Confidential”
- “Discretion”
- Mechanical voice/lack of intonation
- Lighting and glare, soft-focus, features



Preventative measures

- Identification
- Recent conversations
- Personal questions



Protecting your business

- Approval systems
- Training
- Awareness
- Internal 'first responder' team



If the worst happens

- Escalate to ‘first responder’ team
- Contact bank
- Instruct lawyers
- Disclosure Orders/Norwich Pharmacal Orders
- Freezing Orders
- Claims against third parties



Contact Us



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SESSION 5:

Ensuring M&A success:
some perspectives on
leading from within

Intro

- An in-house legal team plays a critical role in guiding M&A transactions, ensuring legal compliance, and mitigating risks.
- You will all potentially (to a greater or lesser extent) need to be involved with corporate deals.
- We're going to do a bite sized exploration of how you can add value and enhance the success of M&A deals for your organization and be seen to do so.



Components of M&A Success



1. Strategic Fit

- Studies show that strategic fit can lead to a 10-15% increase in shareholder value post-acquisition.



2. Due Diligence

- According to Deloitte, 50% of successful M&As attribute their success to effective due diligence.



3. Cultural Integration

- McKinsey reports that cultural integration is a key factor in 30% of successful M&As.



4. Clear Communication

- Companies with clear communication strategies are 20% more likely to achieve M&A objectives.



5. Strong Leadership

- Leadership is cited as a critical success factor in 40% of successful M&As.



Causes of M&A Failure



1. Overvaluation

- Harvard Business Review notes that 70-90% of M&As fail to deliver expected value, often due to overvaluation.



2. Poor Integration

- PwC has found that 60% of M&A failures are due to poor integration.



3. Lack of Clear Objectives

- Companies with unclear M&A objectives are 50% more likely to fail.



4. Regulatory Hurdles

- Regulatory issues are a significant factor in 20% of failed M&As.

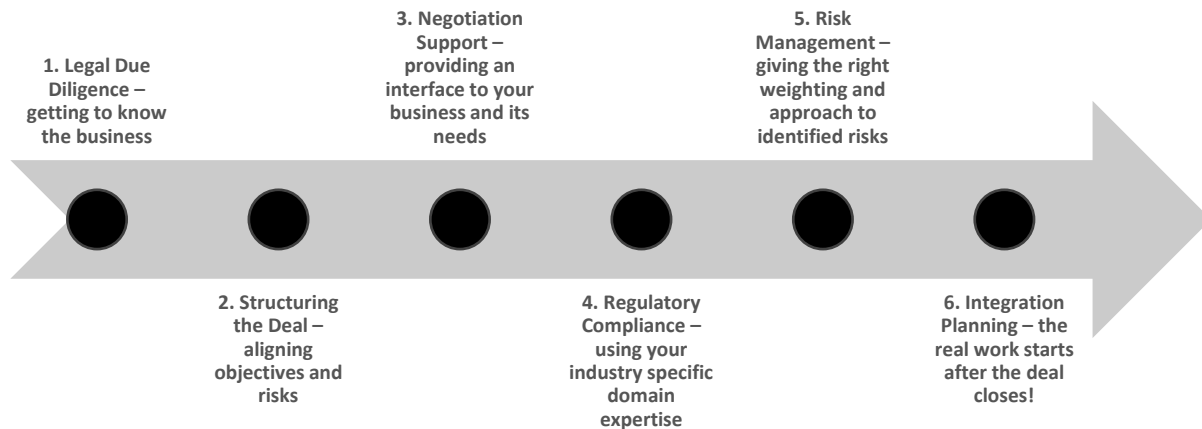


5. Market Conditions

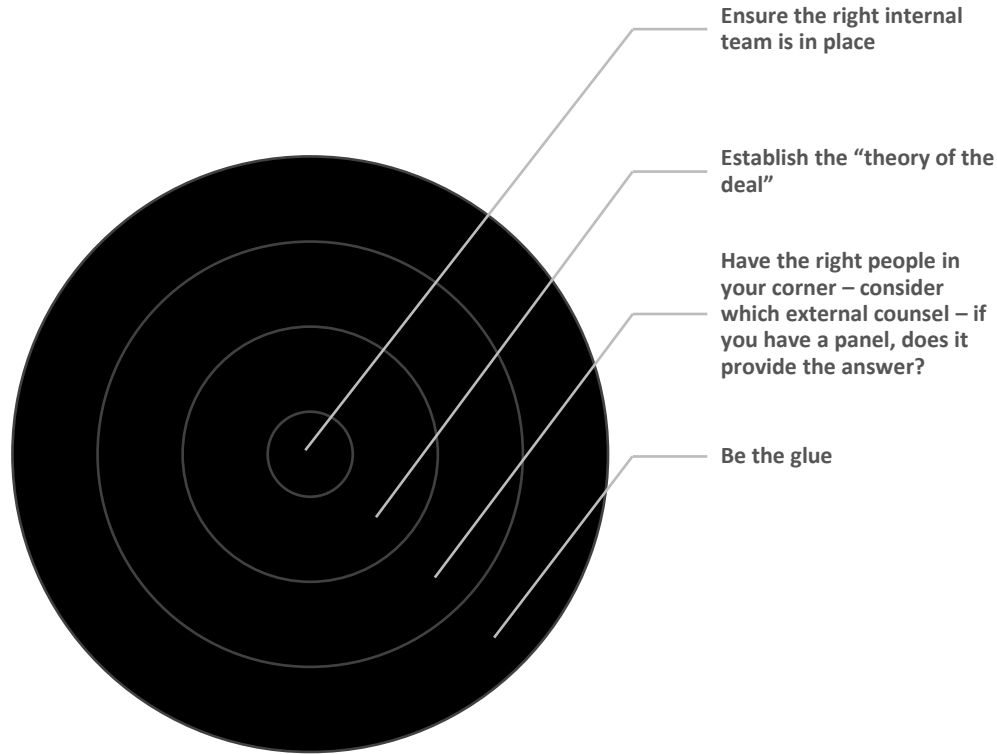
- Evidence: Economic downturns have been linked to a 30% increase in M&A failures.



The in-house part to play



So how can you max the chances of success?



Strategies for Maximising Success

Early Involvement

- **Proactive Engagement:** Ensure you are involved early in the M&A process to leverage your expertise from the outset. This allows for better risk assessment and strategic planning.

Cross-Functional Collaboration

- **Team Integration:** Work closely with finance, HR, and operations teams to ensure a holistic approach and clear interface to your external advisors and the other side.

Continuous Learning

- **Staying Informed:** Keep abreast of legal developments and industry trends to provide informed advice. Let us help!

Clear Communication

- **Stakeholder Engagement:** Maintain open lines of communication with all stakeholders, including the board, executives, and external advisors. This builds trust and facilitates smoother decision-making processes.



Above all



Close.