

# BUSINESS COMPLIANCE

Governance – Compliance – Ethics

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## EDITORIAL

Anthony Smith-Meyer\*



■ **Welcome to this edition of the Journal of Business compliance**, as business returns to normal after the Easter break. The spirit of Spring is upon us and we might all look to the future with hope and optimism. This very human ability has been essential to our survival as a species; and possibly remains so to the careers and aspirations of ethics and governance workers?

During the short interval between our February issue and the time of writing, there have been events aplenty to concern us with. Failures of governance and leadership have beset celebrated, public institutions like the British National Health System<sup>1</sup> where the governing board of Stafford Hospital<sup>2</sup> appeared to have lost all sight of their reason for being. Elsewhere, careers and egos have been broken or bruised at the top of industry. At Swedish TeliaSonera<sup>3</sup>, the simple lack of care and due diligence checks on third party associates led to suspicions

of corruption and the resignation of their CEO. As the storm continues to rage around the link between corporate responsibility, greed and executive pay, EU and Swiss legislators have adjudged the compensation packages offered to captains of industry, for good or bad performance, to be such that greater shareholder scrutiny is required.

Yet stay positive and hopeful we must. In the words of Bill Gates:  
*“It’s fine to celebrate success but it is more important to heed the lessons of failure.”*

At the Journal we try to match these challenges with knowledge and inspiration to allow our readership to move ahead and across the obstacles they encounter. To help us do so, we are very pleased to welcome Nico Zwikker to our Editorial Board. A lawyer by background, a risk and compliance specialist by trade, a thought leader by nature, Nico brings his extensive experienced gained at the head

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\* **Anthony Smith-Meyer** is Editor-in-Chief of the Journal of Business Compliance. His biography may be found in the final section of this issue.

1 <http://www.bbc.co.uk/news/health-21357532>

2 <http://www.bbc.co.uk/news/uk-england-stoke-staffordshire-21228820>

3 <http://t.co/LMGgdnV1>

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of both highly competitive commercial ventures and most recently as Head of Group Compliance at ABN Amro to help the continuing strengthening of our Editorial Board.

In this issue, we dedicate some time and thought to addressing issues of leadership and governance at executive levels of our organisations. Torben Ballegaard Sørensen, a Director of Lego and previously CEO of Bang & Olufsen, shares with us his experiences of directorship in cutting edge firms, the lessons learned from the challenge of heading and guiding global companies, whose success are built on their ability to anticipate and react to constantly changing circumstances around them. To lead a company with a tone at the top that is infectious, passionate, and which inspires loyalty and dedication to the future success of the firm is the subject matter of “The Courage to Lead”, contributed by the business psychologist Fiona Beddoes-Jones.

The mission of ethics workers is not easy. Over the past year we have seen ethics workers suffer as a result of their

inability to fulfill the expectations of their posts, either through lack of clarity of objective or the limitations of governance structures meant to support their task. Nicole Dando investigates the risks and dangers facing the ethics representative and provides some ideas on how to limit such risks.

We at the Journal, by way of the undersigned, have embarked on our first, if modest, benchmark review. If one of the greater obstacles facing ethics workers is the adequacy of resources placed at his/her disposition, then the communication of the value of ethics and compliance programmes becomes an essential skill. Yet, where value is largely a reflection of an intangible impact on organisational culture, and the costs of non-compliance avoided, this is far from a simple task. Hence we have reached out to peers amongst compliance heads and board directors to help us understand current methods used for this purpose, and tried to evaluate the effectiveness of such measures.

One of the many snippets of food for thought on offer, is how to get the best

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out of our relationships with other departments within our organisations, such as Human Resources. Natalie Evenas seeks to raise awareness of the overlap of objectives between ethics and employee management initiatives and invites a dialogue, which we believe should surely be exploited. This practical approach to solution finding is followed up by the third part in our Siemens case study introduced in our inaugural 01/02-12 issue<sup>4</sup>. Rainer-Diethardt Buehrer and Antonie Wauschkuhn explain the post-crisis procedures of how Siemens handle concerns raised by staff, investigate and follow through effectively on disciplining any substantiated misconduct. We would reiterate our appreciation to Siemens for their candor and willingness to share their hard learnt lessons with the rest of the ethics community.

Finally – at a time when reflection is still rife on the outcome of the Cyprus crisis – Alexandria Carr considers the ebb and flow of the forces that push towards greater unity and communality of cause at the heart of the political establishments

of the European Union, yet counter to the desire of local governments to further their national interest; thereby resisting the “siren call” of Brussels. At a point of EU and Euro history where capital controls have once again been brought into use, it would seem an apt time to ask the question: Wither Europe?

**We hope that this issue’s collection of articles will once again challenge our readers:** To consider and question if there are not areas within their sphere of responsibilities that might gain from applying knowledge shared in this Journal in the quest for greater effectiveness.

*“Far better is it to dare mighty things, to win glorious triumphs, even though checkered by failure...than to rank with those poor spirits who neither enjoy much nor suffer much, because they live in a gray twilight that knows not victory nor defeat.”*

– THEODORE ROOSEVELT

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4 Still available for free download at [www.journalofbusinesscompliance.com](http://www.journalofbusinesscompliance.com)

# GOVERNANCE

## THE VALUE-ADDING BOARD: ITS FOCUS AND WORK



*Torben Ballegaard Sørensen\**

Drawing on his experiences as an executive, board member and chairman Torben Ballegaard Sørensen reflects on the stimulating spirit and benefits of inspiring dialogue and the rigorous exchange of views in a well functioning board. There are times however, when the opposite is true and a lack of genuine engagement, competence and basic trust destroys boardroom performance. The deficiencies of an ineffective board are seldom seen until it is too late and the business is in disarray. Recent attention has been poured onto the disturbing examples of the banking sector, but also the boards of industrial companies can be passive and dysfunctional with dire consequences. We look at the lessons to be learned and beneficially applied to boards of directors to render governance more effective.

■ Let us begin with a true story of how a board can fail in its role to add value to the firm:

A company in the Do-It-Yourself industry had experienced stagnating sales for several years. Although the board members had noticed the string of poor results, they accepted management's repeated explanations of "tough competition, bad weather, weakening economies", etc. Gradually getting used to these excuses, the board found itself

nodding understandingly and spending most of the meeting time going through issues inside a decent comfort zone, such as formal compliance checklists, politely attending to the CFO's and auditors' detailed rehearsal of the financial report, and reviewing the auditors' report including its critique of "routine" administrative weaknesses, including its critique of various administrative control processes. After each board meeting the CEO/chairman expressed his sincere and apologetic hope for better

\* **Torben Ballegaard Sørensen** is a Director of Lego, and previously CEO of Bang & Olufsen, Denmark.

## THE VALUE-ADDING BOARD: ITS FOCUS AND WORK

market conditions next year “when this crisis is over”. The agenda was usually exhausted prior to lunch. Rather than tackling the strategic failings of the company, management and the board started to spend time with investment bankers to see if an industry player would buy the company. Some were interested, but a transaction remained remote. As complaints over the “tough market conditions” amplified and the dialogue with possible buyers took almost all management attention, the board’s ability to focus and execute on business performance gradually deteriorated. The directors did not have the stamina to ask the fundamental questions to understand what was wrong; they hoped for a divestment of the company to ease the way out of the embarrassing squeeze. Unfortunately, the company ran out of cash before a white knight arrived.

What this board lacked, and what many boards are in need of, are two key governance principles to define the role of the board from one of supervision, to a driver of the business, and a separation of CEO and Chairperson roles to ensure an appropriate challenge and support for executive management.

### **The DIY Company’s board of directors failed to perform its value-adding role as:**

- a visible and active part of the company’s leadership function,
- the trusted guarantor of proactive control, and
- a trusted provider of guidance and coaching to management.

### **From compliance oversight to a driver of business.**

To be proactive in the pursuit of the long term success of the company, there has to be (i) clarity on the responsibility of the board to lay down the strategy of the firm, and (ii) the composition and competencies of the board has to be adequate to meet the challenges going forward. Guidelines for good corporate governance issued by many-varied sources since the Millennium all focus on qualification, evaluation, transparency, length of service, etc. and resulted in a healthy elevation of the general competence and influence of many boards. In the aftermath of the financial crisis, regulatory authorities have intensified the regulation further.

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However, more rules and box-ticking compliance do not ensure higher board performance or help companies develop strategies to win in the global market place. Instead, the escalating rules have in many instances led to pedantic exercises which focus board and management on form rather than content. Board work must not be mechanized at the sacrifice of strategic and creative edge.

### **From monolithic to dualistic governance.**

The solitaire Chairman & CEO controlling a passive board was the dominant norm in the affluent growth environment of the 1960s and onwards, and still today dominates the perception of modern governance. That model is now becoming insufficient. In times of low visibility and high pace of change, one brain alone (or one inbred team) is seldom able to comprehend the entire landscape quickly, openly, and broadly enough to distill learning, or to conceive a robust strategy. Management is under so much operational pressure that even the most gifted and forward looking team will benefit from an interaction with a set of informed, independent,

and diversified brains, to inspire and to strike the balance between “today’s battle” and “the creation of a winning strategy”.

More than ever, an active two-tier governance model based on more than one view, and more than one mindset to form the creative response to complex issues like strategy, innovation, and organisation is required. The active dualistic model, separating CEO and Chairperson roles is already applied by many successful companies and private equity firms benefitting from a trusted and qualified board dialogue when dealing with business challenges. These companies enjoy board work as truly value-adding by inspiring their management to set a course towards their strategic objective and maintain it. The board of these companies are involved in the strategic crafting already while the “clay is wet” and they act as coach and inspire management – when needed – to pause, reflect, and think in order to reach a deeper understanding before dealing with obstacles and challenges.

The dualistic model requires a collaborative mindset and good transparency.



## THE VALUE-ADDING BOARD: ITS FOCUS AND WORK

The classic situation where board and management find themselves in ‘separate camps’ and where cooperation degenerates to a negotiation, is not enough to win the strategic battles. The days of the autonomous CEO who “knows it all” and who controls the information flow and agenda are coming to an end. Instead, the Value-Adding Board provides challenge and coaching, inspires creative strategic thinking, and energises management to deliver great performance and withstand tough times.

*The days of the autonomous CEO who “knows it all” and who controls the information flow and agenda are coming to an end. Instead, the Value-Adding Board provides challenge and coaching, inspires creative strategic thinking, and energises management to deliver great performance and withstand tough times*

To become effective, the board needs to **apply five value-adding practices**, which are pure common sense, but which tend to be forgotten under the onslaught of rules and regulations.

### **PRACTICE 1: INCREASE ‘HOUSEKEEPING’ EFFICIENCY TO FREE UP BANDWIDTH**

The board needs to free up time for its strategic work by pushing as much as possible of the recurring formal preparations and housekeeping chores out of the boardroom. Effective Management Information is key to enabling a crisp handling and conclusion of these items based on one-page summaries, which highlight the essential recommendation without loss of quality (assuming ‘going concern’). Each board member must honor the discipline of careful preparation and clarify any question with management prior to the board meeting, reducing time wasted on the review of papers and slides. The board must leave the comfort zone of historic accounting, and actively join the work of creating the future.

### **PRACTICE 2: CONSTANTLY IMPROVE THE PERSONAL AND PROFESSIONAL QUALITIES OF THE BOARD**

The prerequisite for genuine, engaged cooperation lies in ensuring competence and qualification in terms of good judgmental capacity paired with business

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**“Groupthink”**

acumen. The board’s combined competence profile must fit the implied requirements of strategy, for example: entering Asia, driving M&As, entering online, or moving from wholesale to retail. The board must annually assess if the current composition of skills is appropriate to the strategic challenges going forward. Failure to do so risks groupthink and detachment from the business, and potentially failure of strategy.

*The board must assess if the current composition of skills is appropriate to the strategic challenges going forward*

### **PRACTICE 3.**

#### **REFRAIN FROM SUCCUMBING TO OUTSIDE, SHORT TERM PRESSURES**

It is frequently overlooked, especially in periods of crisis or criticism from media, analysts, investors, and regulators, that the board has an important role to support and assist management; shielding it from short term hype and pressures so it can focus on what’s right for the company and its shareholders on the long horizon. The board needs to prepare for crisis and

rehearse responses to stock market and press hype, ensuring a full understanding of individual roles and responsibilities to avoid the disproportionate consumption of time and attention of management or the board. Establishing communication strategies and stakeholder networks in advance of crisis or other unusual media activity is an investment that will help the management and board to focus on doing what is right from a value creation perspective and avoid the company drifting from being customer driven to being stock market driven.

### **PRACTICE 4:**

#### **INCREASE INTERACTIVITY BETWEEN THE DIRECTORS AND EXECUTIVE MANAGEMENT**

With more time, up-to-date competencies, and efficient handling of short term distractions, the board and management are now in a position to engage in a more proactive dialogue and cooperation. Old style boards will experience the idea of interactivity as a new practice requiring a heightened level of trust, openness, and alignment. Closer cooperation is a change of behavior built on great chemistry, clarity of roles, mutual understanding

## THE VALUE-ADDING BOARD: ITS FOCUS AND WORK

and respect. That is a prerequisite for achieving greater effectiveness in diagnosis and identification of solutions. This enables the fifth practice to be realised.

### **PRACTICE 5: MANAGE THE BOARD AGENDA FOR CHANGE – AND CONTROL**

The value-adding board is now in a position to basically turn its agenda upside down and reallocate time evenly between five key focus areas, in this sequence:

- First:** Developing the long view and the crafting of strategy
- Second:** Challenging and overseeing the execution of strategy by the executive
- Third:** Evaluation and response to internal & external key performance indicators
- Fourth:** Review of critical health markers within the organisation
- Fifth:** Formal compliance, conduct and routine housekeeping items

### **Creating the Value-Added Board Agenda**

In the business-as-normal agenda,

ensuring focus on the strategic direction of the organisation can be accomplished with discipline and determination without sacrifice of the board's statutory control obligations. The key is for the board to step out of its historically driven, routine habits and engage in the crafting of strategy, starting the day with a forward-looking mindset. Fail to do so – if the board lets itself be dominated by an imposed, formalistic compliance agenda or the fighting of temporary fires sparked by unmanaged, hyped surroundings – and it cannot shield, provide inspiration or guidance to its management.

The five focus areas constitute the substance of the dialogue and cooperation between the Value-Adding Board and Management. They are briefly touched upon one by one below:

### **THE FIRST FOCUS AREA: THE LONG VIEW AND THE CRAFTING OF STRATEGY**

A board is responsible for, but finds itself by definition at a distance from the daily operations of the company. That very distance, combined with common sense, business acumen and

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experience from analog situations, is exactly why the board can apply a holistic perspective on the organisation and therefore add value to the strategic thinking. Putting strategy first on each meeting's agenda is not an escape to 'far out horizons' or a reason to constantly reshuffle strategy. Instead, this agenda item leads to a rigorous review of actual or potential strategic change in the competitive landscape. It moves the strategic work from rain dance to active business development by challenging orthodoxies and stimulating the creation of perspective, and reflection on possible game changes.

### **THE SECOND FOCUS AREA: FOLLOW-UP ON THE EXECUTION OF THE STRATEGY**

The board delegates the execution of strategy to the executive. Once delegated, the board must ensure that what is out-of-sight does not end up as out-of-mind. It is a challenge to keep momentum in initiatives that require a change in behavior. Altering adherence to past truths demands continuous reminders; in turn requiring stamina and persistence by the management and support from

the board. There are always obstacles to change; some real, others imagined. Overcoming obstacles and ensuring execution is so important that it must be placed second on the board's agenda with enough information to be sure that the critical value drivers are progressing according to plan.

### **THE THIRD FOCUS AREA: SIMPLE, ACTIONABLE FOLLOW-UP ON OPERATIONAL PERFORMANCE**

Most boards are subject to, and accept an excess (or deficit) of information provided by management resulting in an inability to keep track of the fundamental risks and performance of the company. Periodically (every 2 or 3 years) the board should review and refresh the key operational parameters which it considers critical in order to track performance and to initiate timely action, given the particular business, its strategy and circumstance. On these central parameters, the board must be provided with a simple, transparent, and actionable performance update including a brief personal letter from the CEO. The performance follow-up shall contain the right set of KPIs at an appropriate level

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of detail – enough to capture the essence – and not so much that the overview is lost, usually less than 10-15 pages.

### **THE FOURTH FOCUS AREA: TRACKING AND INTERPRETING ORGANISATIONAL HEALTH MARKERS**

In his book, “Why the Mighty Fall” (2009) Collins makes the point that “an institution can look strong on the outside but already be sick on the inside, dangerously on the cusp of a precipitous fall” and he points out the importance of health markers which may reveal early signs of deterioration in the mindset, behavior, and culture of management and the organisation, including complacency, arrogance, discipline, hubris, or ignoring inconvenient truths. Over time, such decline will certainly impact the company’s performance. Health markers do not appear in formal reporting, are rarely explicit, and (too) seldom a subject for dialogue. But unattended, the decline may often turn out to be irreversible. The value-adding board must therefore be alert to signs of decline and set time aside on the agenda for a systematic review. Making use of its holistic view of events and people, the

board needs to ask the right questions and spot changes in behavior and mindset, including the quality of relationships between the board, management and stakeholders

### **THE FIFTH FOCUS AREA: FORMAL COMPLIANCE, CONDUCT AND HOUSEKEEPING**

It is of course the board’s ultimate responsibility to deal with all formal household tasks such as review of auditors’ report, approval of the accounting, review of policies and systems, risk management, etc. From a process point of view, the challenge is for the board to cut through decades of tradition and instead rationalize the household handling by delegating as much as possible to internal/external specialists without sacrifice of diligence, and to rely on effective escalation procedures. Failure to do so often means that the board gets absorbed in historic numbers and formal matters, while losing control of the company’s long-term destiny.

### **The personal and professional qualities of the board**

For the board to effectively apply the

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five practices and give even attention to the five focus areas require a good amount of common sense, engagement, and determination. An environment of open and trustful cooperation is required. The board must be able to honestly and constructively pose the right questions, stimulate reflection and critical thinking, and inspire management to be open to new perspectives.

In order to do this, the value-adding board member profile emphasizes the ability to engage; that is to say to listen (actively), to comprehend, and to influence and inspire management. Additionally, board members must possess integrity, maturity, empathy, prudent judgment, and – not least – a good dose of humour. The requisite professional qualities present in the board composition must include the elements of general managerial experience, analytical and communicative skills, and experience from the same or analog industries. Diversity in all its aspects of gender, passport, geography, and cultural have virtue and value relative to the company's scope and complexity. It is an important task for the owners, the nomination committee and the board to

develop a mix of qualities which match the company's strategy and development, typically evolving on a rolling of 2-3 years horizon.

*Board members must possess integrity, maturity, empathy, prudent judgment, and – not least – a good dose of humour*

### **Conclusion**

The journey to become a value-adding board starts with the board regaining control over its time and agenda and solving the board's dilemma between "adequate control and compliance" versus "serious strategic focus". Putting the five value-adding practices into action and applying a new level of engagement and passion, a high level of trust between the board and the management and a new focus can be achieved. This new focus requires that the board turns its agenda upside down and decisively allocates more time and attention to four equally critical areas: strategy, execution, performance, and health, while becoming more effective at handling the basic housekeeping chores. To paraphrase the

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economist Michael Porter: Boards do not need more rules on how to do things right – they need inspiration to do the right things. ■

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Based on extracts from the book:

“The Value Adding Board – its focus and work”:

<http://amzn.to/YSUkrB>

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**Torben Ballegaard Sørensen** has been President and CEO of Bang & Olufsen A/S and before that executive vice president at LEGO A/S. Prior to that, he was managing director for CCI-Europe, the leading provider of large newspaper and magazine publishing systems globally. The author’s career has involved a number of international corporations headquartered in Finland, Sweden, Denmark, and Germany subject to a multitude of ownership forms. The author has recently published his book “The Value Adding Board – its focus and work” and holds an adjunct professorship at Aarhus University, Denmark.

## MANAGEMENT CORNER

# AUTHENTIC LEADERSHIP: THE COURAGE TO LEAD



*Fiona Beddoes-Jones\**

Some have encountered it; others have aspired to it; many have spoken of it: Tone at the top. In any discussion of organisational culture and behaviour, the example set by leaders who “walk the talk” in living and demonstrating their values and the shared values of the community is probably one of the most essential drivers of ethical conduct in an organisation. But as we have seen executives fail, time and time again, what does setting the right tone really mean, and how can it be achieved? In a series of two articles that will relate to anyone in a position of leadership, from the Board down to a first-line leader, all of whom should be standard bearers of integrity and good judgement, Fiona Beddoes-Jones explores what it means to be an Authentic Leader and to have the courage to lead: Why it’s important; its organisational benefits, and how to develop it in today’s complex and sometimes difficult and contradictory business environment.

### **Courage... from the old French *cuere* meaning heart**

- The quality of mind and spirit that enables a person to face danger with bravery
- (*Obsolete*) The heart as the source of emotion. Compassion, empathy
- Acting in accordance with one’s beliefs and values in the face of criticism or danger.

Leadership isn’t easy. Anyone who thinks that it is has clearly never tried it! But why would a leader need courage? The courage to do what exactly? Some of the things that people on Authentic Leadership development workshops I have run have said when they have thought about what it means for them

\* **Fiona Beddoes-Jones** is a Business Psychologist and a member of BP’s Global Leadership Faculty.



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personally to have the courage to lead include, to:

- Do what's right, regardless of the cost to you
- Develop your own voice and be known for your ethical standpoint
- Take daily steps to develop your self-awareness and yourself
- Ask for honest feedback and to accept it without becoming defensive or self-justifying
- Be vulnerable, be ready to make mistakes, to admit you were wrong, to apologise sincerely and to change
- Be prepared to lose your job rather than compromise your principles
- Be not only your authentic self, but your very 'best self'.

Your leadership style is intensely personal; no two people will ever lead in exactly the same way. Authentic Leadership links who you are as a person (i.e. your beliefs and values), how you lead and manage (i.e. your thinking and behaviours). Perhaps, *“real leadership starts with the subtle but effective knack of just being*

*yourself”*<sup>1</sup>, suggesting that being authentic is somehow enough? However, just being yourself is not quite as simple as it may at first appear. You cannot be yourself until you know who you are at your core and what has made you the person and leader that you are today. Many of us spend a lifetime trying to understand who we 'really' are and what that means for us in our different personal and professional roles.

### **Why it matters**

It seems that employees want to be able to trust their leaders. In 2009, a Gallup research team asked more than 10,000 followers what they wanted from their leaders. The answers will not surprise you if you are a follower, but may have escaped your attention if you are a leader tied up in the meetings and activities that constitute your normal working day. The four things that followers want from their leaders are not task-focused or results-driven. They are neither operational nor strategic, and they say less about what a leader *does*, than who a leader *is* in terms of personal characteristics and values.

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1 Goffee, R. & Jones, G. (2006). *Lead Your Way*. Management Today. February, pp. 47-51.

## AUTHENTIC LEADERSHIP: THE COURAGE TO LEAD

*“The first thing followers want most from their leaders is to be able to trust them; to believe that what they say is true”*

The first thing followers want most from their leaders is to be able to trust them; to believe that what they say is true. The second thing is for a leader to be compassionate; to have empathy and to care about their well-being. Thirdly, followers want stability, which is something that many leaders either overlook or simply don't seem to realise in their relentless drive for change, performance improvements and financial savings. Finally, followers want to feel hopeful about the future, something that is impossible without trust being present<sup>2</sup>.

Research conducted in 2009 by Management Today and the Institute of Leadership and Management found that 31% of non-managers and 28% of managers had no trust or low trust in their management teams<sup>3</sup>. To be trusted, it is not sufficient for leaders to view themselves as being exemplary and ethical in all their dealings, but they have to be seen by the broader community to be principled and honest, competent and fair. With the focus

on trust, transparency and ethics, more than ever before, leaders are having their thoughts and behaviours examined under a microscope. I believe that we now face a call to action regarding the immediate need for a new philosophy of leadership. We need an intelligent, compassionate leadership approach that is pro-social, purposeful and transformational; one that creates meaningful dialogue and meaningful relationships within and between organisations.

There is a danger I think, in these stressful times, that 'good' leadership, by which I mean engaging, pro-social, collaborative, purposeful and compassionate leadership, is under-valued, and as such is being eroded rather than encouraged. In contrast, 'bad' leadership, by which I mean anti-social, task driven, competitive and bullying leadership, is valued because in the short term at least, it appears to deliver bottom line results. I would suggest that we need more self-aware leaders, better quality thinking and a focus on transformative, pro-social, sustainable and collaborative

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2 <http://businessjournal.gallup.com/content/113542/what-followers-want-from-leaders.aspx>

3 De Vita, E. (2009). *Do you Trust your Boss?* Management Today, September 2009  
<http://www.managementtoday.co.uk/news/929302>

## AUTHENTIC LEADERSHIP: THE COURAGE TO LEAD

*“Authentic Leadership is less about traditional models of power and control and more about influence and the quality of follower relationships”*

leadership that is people-focused and values-led rather than simply profit driven.

Many, if not most people, will argue that leadership is all about leading a team, having followers, or as a minimum, at least one direct report. At the risk of being controversial, I would like to offer a slightly different idea of leadership; that leadership is about learning to lead ourselves so others choose to follow. This notion; that leadership is less about traditional models of power and control and more about influence and the quality of follower relationships, is consistent with a new kind of leadership which seems to have emerged post the 9/11 tragedy, that of ‘Authentic’ Leadership.

### **Introducing Authentic Leadership**

But what is Authentic Leadership? That’s a big question and was the question I started with in the PhD research that I recently conducted with senior officers of the RAF. To answer it I needed to explore three perspectives: firstly to explore and understand what it means to be ‘authentic’; secondly, to consider what ‘leadership’ might mean; and

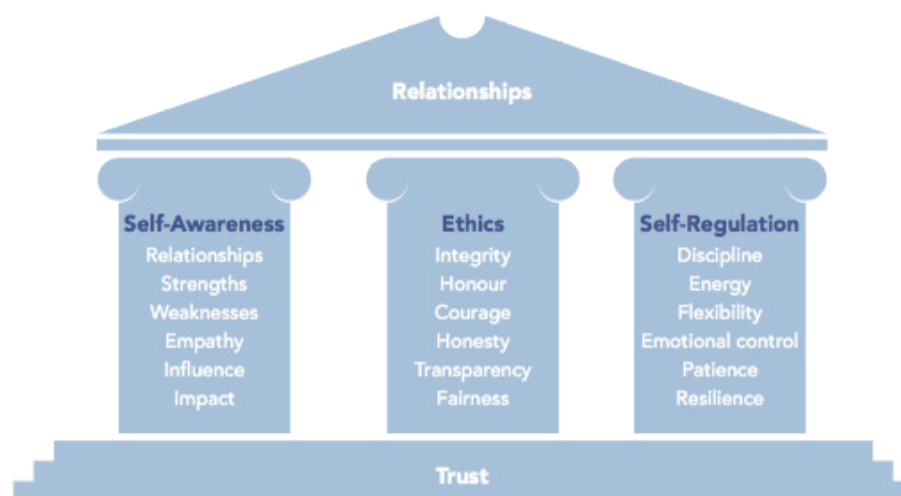
finally linking the two words together to see if ‘Authentic Leadership’ might be substantively different to other kinds of leadership, such as Charismatic Leadership, Transformational Leadership or Servant Leadership to name but a few!

Authentic Leadership means much more than simply ‘being genuine’ or ‘true to yourself’. After all, you could argue that all leaders are being true to themselves and that every leadership style is authentic’, despite its good or bad qualities. The ABC of authentic leadership is:

- **Authenticity**, (being true to yourself and your values),
- **Bravery**, (having the courage to lead, particularly in the face of danger or dissent) and
- **Compassion**, (leading with empathy and concern for the well-being of others).

Authentic leadership therefore links who you are as a person – your beliefs and values – with how you lead and manage – your personality, thinking and behaviours. Authentic leaders combine

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pro-social, collaborative leadership with integrity and purpose.

My research has revealed that there are three statistically-significant dimensions that form the pillars of Authentic Leadership.

### **Self-awareness**

The first pillar is self-awareness: knowing your real strengths and weaknesses, understanding how other people perceive you, being acutely aware of how your thoughts and emotions influence your language and behaviours and, therefore, the impact and influence that you have on others. It is the ability to articulate your core beliefs and values, and understand your personal boundaries and emotional and intellectual drivers. In short, it is knowing who you are and what you value, thereby building a secure sense of self that provides an anchor for your decisions and actions.

### **Self-regulation**

Self-regulation is the second pillar of Authentic Leadership and is closely connected with how well you know and understand yourself. It concerns

self-management: your focus; your self-discipline; your ability to be actively and deliberately in control of your thoughts, emotions and behaviours; your levels of tolerance and patience; how you manage your energy, and your physical, mental and emotional resilience.

### **Ethics**

The third pillar is ethics. Sitting neatly within the ethical pillar of Authentic Leadership is professional integrity; your ethical decision-making. Those core beliefs and values that underpin your personal leadership philosophy; the courage to remain steadfast in the face of ethical dissent or wrong-doing by others; having a pro-social leadership ethos and the desire to serve the wider community. Honesty, openness, trust, transparency, the moral capacity to judge dilemmas from multiple perspectives and being able to take into consideration different stakeholder needs.

Having had the good fortune to work with a number of ethics and compliance professionals over the years, I think I can confidently predict that, in a 360° appraisal of their Authentic Leadership

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*“Followers judge leaders against their actions; what a leader does seems to be far more important than anything that they may say”*

characteristics, most would score very highly for professional integrity and moderately for the elements of self-discipline and personal management. I would expect them to be as self-aware as most other managers and leaders at their level; which is to say that they would probably estimate themselves to be more self-aware and ‘better’ leaders than their teams or colleagues would estimate them to be! Such is the nature of 360° feedback; our self-appraisals are usually higher than other people’s appraisal of us. Authentic Leaders, because they are more self-aware than other people, tend to have a much more accurate view of how others see them.

When conducting my research, I divided the ethical dimension into two: ethical virtue and ethical action. I wanted to find out, from a follower’s perspective regarding ethics, whether there is a difference between what a leader *says* and what he *does*. I used two samples: a business leadership sample and the RAF senior officer leadership sample. The results were the same in both cases. Followers expect consistency and congruence from their leaders. They

expect a leader to, ‘walk their talk’, and will cease to trust them if their words and actions don’t match. More crucially though, despite any rhetoric, followers judge leaders against their actions; what a leader *does* seems to be far more important than anything that they may *say*. This is a critical lesson for all leaders to learn, especially those politicians and public servants in the public eye.

### **The importance of declared values**

If all leaders were Authentic Leaders; pro-social, professionally ethical and with the moral courage to stand up for what is right, everyone in every organisation would be treated fairly and equally. Therefore there would be no need for employment, age, disability, gender, race or sexual discrimination legislation, and possibly, controversially and theoretically, no need for a compliance industry to ensure that the right decisions were made. So far I have suggested that every leader should act according to their beliefs and values – however, unless verbalised and shared, these values will be ‘hidden’, making it difficult for followers to really know what a leader stands for. The Authentic

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### The Temptation of Sir Percival



Leader gives voice to the values they espouse so that followers explicitly know the standards by which they will be held to account. This, combined with consistency of thought and deed, which therefore engenders predictability, is what ultimately establishes trust.

### Next steps

In this article, I have explained the principal elements of Authentic Leadership that are necessary to ensure a sense of integrity and ethical accountability within an organisation or community. As you've been reading this article, you have probably mentally identified a number of people who fall short of the label of Authentic Leaders. Some of the high profile *inauthentic* leaders are relatively easy to identify; they are embroiled in corporate or political scandals, whereas their Authentic Leader counterparts are often the very whistle blowers who brought the scandal into the world's public awareness. In the next issue, in a second article, I will explore some examples of authentic and inauthentic leaders and explain how Authentic Leadership can be developed from both a personal and organisational perspective. ■

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## FOCAL POINT

# ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY



*Nicole Dando\**

On July 17, 2012, the group compliance officer of HSBC dramatically stepped down from his post at a public hearing of the US senate<sup>1</sup>. This resignation was prompted by failures to prevent transactions related to money laundering in Mexico and the illicit concealment of beneficiaries of transfers to Iran and other sanctioned recipients through their US operations. There were no other notable resignations of people in existing executive roles at the bank following this scandal. It was a stark warning to ethics and compliance professionals of the front line nature of the risks they could face, in what is commonly considered a second line of defense; a supervisory function only. Such professionals work at all levels of an organisation and frequently, if not always, have a duty to identify and intervene in potential misconduct – deliberate or accidental. Failure to perform could have high profile consequences, and be potentially devastating to the individual's reputation or involve legal liability not covered by formal equivalents of Directors and Officers Insurance arrangements. Dr Nicole Dando explores the extent of the risk facing ethics and compliance representatives and considers what might be done to mitigate it.

■ The increasing profile of ethics matters in business and the consequent rise in visibility of corporate ethics functions have created new opportunities and responsibilities for those working in an ethics role; whether as a full time compliance professional or a voluntary part-time ethics ambassador.

The role of these 'Ethics Representatives' (ERs) can be rewarding and highly valued. Yet, they are subject to a particular set of challenges. Whereas the ER is principally expected to fulfill an advisory and influencing role, the nature of the ER role can mean that the person him/herself is held to higher

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1 <http://bloom.bg/NvwYjx>

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standards than other employees; being expected to ‘walk the talk’ and actively demonstrate exemplary conduct for others to emulate. ERs may also have heightened duties to different stakeholder groups and a position of trust – for example, the trust of management around protecting the company and the trust of employees who share concerns with them. This can increase an ER’s chance of finding himself in situations of complex conflicts of interest and in the ‘line of fire’, of his/her decisions and conduct being scrutinized more so than other employees, and perhaps of being a target for harassment or even litigation following a case of misconduct. Challenging senior and executive staff is very difficult, and the ER may not have a mandate, the support or the power to ensure that concerns about misconduct are followed through by the company. With an increasing profile and wider responsibilities, might these challenges pose a risk to an ER’s career and reputation? Should those working in ethics and compliance roles be worried about their personal exposure to legal liability? Those with responsibilities at or just below executive or board level may be

exposed to liabilities arising mainly from their directorship, and these should be explicit. They may be protected through cover under the company’s Directors and Officers (D&O) and professional indemnity insurances. But what of those in full time or voluntary roles supporting the Chief Ethics and Compliance Officer or similar?

### **Legal liability?**

Generally speaking, ERs are unlikely to have specific legal risk attached to them as long as they are diligent in fulfilling their responsibilities, ask the right questions and escalate concerns that arise to the right people.

However, a sea-change is occurring in relation to civil, regulatory and criminal law. New laws and regulations – primarily a response to the financial crisis – have been emerging with more complexity as different investigations and legal processes compete. The perspective of those bodies charged with enforcement has also been evolving making it difficult to rely upon precedence from seminal cases and enforcement actions.

Personal civil and criminal liability would, of course, fall on ERs as a result of their



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*“Liability would also apply through a failure to satisfy a directly imposed duty under a statutory regime or one which the individual has accepted.”*

advertent or inadvertent participation in wrongdoing or of helping to conceal a wrong after it has occurred. Reflecting the heightened visibility that ERs have, they should familiarise themselves with the laws and regulations that apply to their industry and ensure that they are *personally* compliant at all times.

In some cases and to varying extents, ERs may be given a statutory duty of ‘policing’ their fellow employees for compliance with applicable laws, regulations and organisational policies. However, US and European law does not currently provide that ERs will be held personally liable for genuinely failing to detect wrongdoing within an organisation where reasonable endeavours are apparent. The exception is where their contract, documented in writing or otherwise assumed, does specifically include a responsibility to prevent something, e.g. discrimination. This is likely to be more germane to professional compliance officers than voluntary ethics champions.

**Failure to act – Failure to prevent**  
In the event that wrongful conduct is suspected or committed by another

individual within the organisation, ERs may risk personal liability if they subsequently fail to act, i.e. ignore or conceal the misconduct, or they may face potential disciplinary action (such as firing or demotion) if they fail to investigate obvious ‘red flags’ or to disclose. In the USA, the Dodd-Frank Act makes illegal any attempt by an ER to obstruct or otherwise undermine the process by which an employee rightfully reports suspected misconduct to the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission.

Similarly, legal liability for failure to supervise others, i.e. failure to prevent, arises only in egregious cases or where the ER is specifically required by legislation to supervise and fails to do so. This is most likely to apply to directors. For example, in the USA, ERs who are also members of the board of directors of the organisation can be liable for failing to implement a reporting system or controls or for consciously failing to monitor or oversee the operations of those systems, but that liability is related to board membership, not the professional role of ER.

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

### Some case examples

■ In 2008, the Head of Internal Audit and Legal at a German public cleaning service company, Berliner Stadtreinigung, was convicted after failing to act on evidence of customer overcharging. He had become aware of the systematic overcharging, in the region of some €23 million, and informed a member of the company's board, who instructed him not to correct the error. Subsequently, he was convicted and imprisoned on the basis that he had assisted fraud by failing to take his concerns to a higher level.<sup>2</sup>

■ In 2009, a compliance officer in the UK received an order to sell Greenlight's entire shareholding in Punch Taverns plc, despite being made aware that Greenlight had spoken to Punch a matter of minutes before the decision to sell. Six days later, Punch announced a fundraising, with the result that its share price fell by around 30% and Greenlight

avoided losses of £5.8m. The FSA took the view that the circumstances of the sell-order should have alerted the compliance officer to the risk that the trade was being conducted with the assistance of inside information. The regulator set a personal fine paid by the individual of £130,000 and made the point that it is the duty of compliance professionals and staff on sales and trading desks to identify market abuse.<sup>3</sup>

■ In another case in 2011, the UK's Financial Services Authority (FSA) imposed a fine of £14,000 on a compliance officer at Dynamic Decisions Capital Management, a hedge fund management company. She had failed 'to challenge a colleague, [and] investigate and act on the information she received' following concerns raised by investors around the sale of a bond. The FSA concluded that she 'did not engage with her responsibilities... and therefore failed to act with due

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2 [http://www.martindale.com/members/Article\\_Atachment.aspx?od=119465&id=879558&filename=sr-879560.TheCompliance.pdf](http://www.martindale.com/members/Article_Atachment.aspx?od=119465&id=879558&filename=sr-879560.TheCompliance.pdf)

3 <http://www.fsa.gov.uk/library/communication/pr/2012/007.shtml>

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

### **Senator Levin, chairman of the US Senate Permanent Subcommittee on Investigations**



skill and care’ and neglected ‘to understand the importance of her role and the wider regulatory obligations it brings’.<sup>4</sup>

■ A case was found against a former US compliance officer at Washington investment bank, Ferris Baker Watts, for not taking sufficient action to either fire or better monitor the activities of Stephen Glantz, a broker, to prevent securities fraud.<sup>5</sup> Theodore Urban, who headed up the compliance, human resources and internal audit departments, was alerted to the suspicious activities of Glantz. After investigating further, Urban wrote a memo to the vice chairman of the board and Assistant Head of Retail Sales in December 2004 urging that Glantz be sacked and stating that the firm risked being accused of ‘churning customer accounts’ (i.e. selling accounts with ‘little customer benefit but significant commissions’). The vice chairman refused to sack Glantz and accused Urban of wanting to ‘drive a good producer out of the firm’. They did,

however, place Glantz under ‘special supervision’ by Urban.

In 2007, Glantz pleaded guilty to securities fraud, resulting in a fine and imprisonment. The SEC said that Urban’s efforts to alert senior management to Glantz’s potential wrongdoings and recommendation for dismissal were reasonable. They ruled that it would not have been effective for Urban to overrule the vice chairman and take the matter to the firm’s board, threatening to resign if they did not fire Glantz. However, in late 2010, the SEC’s division of enforcement action appealed the ruling to the SEC’s commissioners on the grounds that Urban violated securities laws by failing to properly supervise Glantz in his capacity of compliance officer. Urban claimed that the ‘special supervision’ of Glantz failed because he was rarely in his office. He also handled both retail and institutional accounts making it even more difficult to monitor his activities.

Legal and Compliance departments do advise brokerages on how to protect

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4 <http://www.fsa.gov.uk/library/communication/pr/2011/099.shtml>

5 See <http://www.secactions.com/?p=2577>

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

*“For those with oversight roles, there must be appropriate checks in place to identify failings, together with a robust and effective system for resolving issues once they arise”*

themselves from the misconduct of an employee, but USA securities laws are vague as to whether they themselves have actual ‘supervisory’ responsibilities with accountability of result. If they do, they can be the target of SEC enforcement action as evidenced by the case of Urban. These cases show that, for those with oversight roles, there must be appropriate checks in place to identify failings, together with a robust and effective system for resolving issues once they arise.

Further to the Berliner example mentioned earlier, the German *Bundesgerichtshof* later expressly stated that a *compliance officer* (not at board level) is obliged to *avert* criminal acts committed by employees of the organisation to the detriment of third parties. As a result, it would seem that an ER with a compliance role – in principle – can be considered criminally liable following offenses committed not by himself, but by other persons in his area of specific responsibility, such as bribery, tax evasion, fraud etc., by virtue of not preventing the offense. This is, however, a local ruling and there is no supporting case history yet.

Although there are similarities between key EU and USA bodies of legislation, it

is perhaps true to say that the USA has a more developed culture of enforcement. However, two things are worth noting. Firstly, in order to address concerns about the scope of personal liability, having the title of chief compliance officer does not, in and of itself, carry supervisory responsibilities. They have to be formally assigned. Secondly, even where compliance officers are deemed to be ‘supervisors’, USA regulation states that they will not be deemed to have failed to reasonably supervise another person if they had reasonably discharged their supervisory responsibilities in accordance with the correct procedures. The SEC’s stated intent is that the monitoring role of a chief compliance officer does not itself subject the officer to liability.

The USA Sentencing Commission Guidelines provide sentencing relief for organisations whose chief ER reports directly to its governing body or subset thereof. In most USA entities, this is the board of directors or a committee of the board, such as the audit committee or governance committee or ethics committee. If this reporting structure is utilised, ERs face less risk for properly fulfilling their obligations.

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

Legal cases like those described above are rare and alone do not suggest a trend. However, they do suggest that ERs need clarity around their responsibilities, legal and personal risks, and to understand how to protect themselves while effectively upholding and fulfilling their designated duties to the organisation.

### **Personal risk?**

While legal liability is rare, concern about personal risk to an ER's career and reputation may be relatively widespread. Among ERs, more worrying than the consequences of making mistakes or not following required procedures, are concerns about the personal consequences arising from actually fulfilling their responsibilities, or from being held responsible for the misconduct of those they are meant to be advising or monitoring. In the former scenario, this includes being ostracized, or even dismissed, for stepping into 'sensitive areas' and challenging unethical behaviour; in the latter it might involve being held as incompetent or even a scapegoat for the misdemeanor of others.

In either case, anxiety about the potential professional stigma is not uncommon. In a recent example in the USA, a former Complex Risk Officer at Morgan Stanley Smith Barney – the bank's wealth management arm – sued the bank in federal court, alleging that it violated the Dodd-Frank Act by firing him in April 2012 for being a whistleblower<sup>6</sup>. He claimed to have told his supervisors in December 2011 that a new Wealth Manager was making trades generating tens of thousands of dollars in commissions, but often made clients lose money. According to the lawsuit, he was told not to investigate because of the revenue the new Wealth Manager was generating. Similarly, the Complex Risk Officer discovered that another Wealth Manager had made more than 80 unauthorized trades that violated the law, but his supervisor told him not to investigate the case further. According to the lawsuit, the Complex Risk Officer also reported unauthorized Treasury trades by a Financial Adviser and alleged drug abuse by another Financial Adviser. Again, his supervisor ordered him not

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6 [http://www.huffingtonpost.com/2012/08/02/morgan-stanley-risk-officer-sues\\_n\\_1732706.html](http://www.huffingtonpost.com/2012/08/02/morgan-stanley-risk-officer-sues_n_1732706.html)

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

to report the unauthorized trades to the Legal department and not to investigate them further.

In early April 2012, the Complex Risk Officer said that the trades should be reported to the Financial Industry Regulatory Authority and he was fired on April 13th 2012 on the basis of poor performance, despite the lawsuit evidencing that all performance reviews indicated that he ‘exceeded expectations,’ - other than one that came after the he had raised his concerns. Legal proceedings continue at the time of writing.

Legislation such as the Dodd-Frank Act in the US and the Public Interest Disclosure Act in the UK gives employees reason to become more confident about bringing their complaints into the open since it prohibits company retaliation against those that speak up. This is particularly relevant for ERs as they are under more pressure than other employees to speak up about wrongdoing due to the nature of their role.

### **Practical Guidance**

Thinking and planning ahead is advisable, so that when a case of misconduct or ethical crisis does arise in which the ER

is caught up, no time is lost in getting good advice and putting in place a correct response.

ERs need to be aware of their particular role and what responsibilities they have accepted in the course of their employment. It is not exceptional for ERs to be operating without a formal job description covering their ethics role and responsibilities. Ensuring that their responsibilities – and liabilities – are stated explicitly in their job descriptions and that sufficient training and resources are provided to help them execute their roles effectively will go part of the way in mitigating personal and/or legal risk.

Maintaining independence can be a challenge for ERs, particularly where the ER also fulfils a full-time operational role. Reporting lines and escalation processes are the main areas where conflicts can arise between ERs professional obligations and their personal liability.

Ideally, ERs should have at least an informal reporting line into a senior person responsible for ethics in the organisation. It is good practice that this person ultimately reports to a member of the board/executive team, demonstrating

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

### JOB DESCRIPTION BASICS:

- Include a detailed and carefully worded terms of reference or job description for the scope, duties and responsibilities being assigned.
- Ensure that adequate resources are to be provided for the performance of the ER's duties.
- Reporting lines and rights of access to higher levels of the organisation, bypassing immediate supervisors if necessary, must be explicitly enshrined in the terms of reference for the role.
- Independent rights of access and consultation with legal and internal audit departments, and reporting obligations to a formal governance structure such as a Risk Committee should be considered best practice.
- Performance appraisals and compensation review of the ER should never solely rest with the business unit being advised or monitored, but with an independent and higher level supervisory superior.

the importance placed on the ER role. The purpose of this reporting structure, which would not include line management, would be to ensure that the ER is able to directly flow ethics related information to the right place. It also provides independence and confidentiality and limits conflicts of interest, particularly if the role is voluntary or in addition to contractual duties.

ERs may need to ask tough questions and put themselves in conflict with other – possibly powerful – people within the organisation. Who can they go to if they are unsatisfied with instructions given to them or the response to a concern that they have raised. In some instances, ERs have lost their jobs when trying to hold executives accountable to ethics standards. It is vital that ERs know how to go outside their chain of command. Board-approved protocols should be in place for what an ER must do if an allegation of misconduct is made against an executive or other senior employee.

### **And finally...**

The responsibilities and liabilities faced by ERs are subject to the particular nature

## ACCOUNTABILITY IN THE ETHICS ROLE: PERSONAL AND LEGAL LIABILITY

of the role in a particular organisation, as well as the varying contexts within which ERs operate across markets, industries and jurisdictions. The role of an ER continues to evolve and the legal context lacks clarity as it also continues to develop. Supporting an ER adequately and effectively, whether in a values or compliance focused role, is essential for companies wanting to attract and retain high quality employees with the diligence, courage and personal integrity necessary for the role of underpinning an ethical corporate culture. ■

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This article is drawn on: *Evolving Responsibilities & Liabilities of Ethics Representatives: a practical guide* by Nicole Dando, Judith Irwin, Murray Grainger, Kate Brearley and Sean Jeffrey and Tim Mazur; published by the European Business Ethics Forum (2013) <http://www.ibe.org.uk/userfiles/evolvingliabilitiesofers.pdf>

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She joined the IBE in 2003 from AccountAbility where she was Programme Manager for the AA1000 assurance and stakeholder engagement standard.

Nicole has a PhD from University College London in sustainability and water resources management, a Masters in Development Studies, and a degree in Chemistry with European Studies.



# COMPLIANCE CHALLENGE

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES



*Anthony Smith-Meyer\**

Mandatory expenses are never popular. Nor are investments when the eventual return is difficult to isolate and evaluate. Finally, and perhaps worst of all, are investments that appear to be unnecessary, over the top, or unjustified. All of these objections have, are and will be cited against the allocation of resources towards ethics or compliance programmes in all manner of organisations – large or small. Pity then the ethics professional, charged with ensuring that adequate measures and means are employed to ensure that the ethical health of the organisation is maintained at “naturally” expected high standards, and who has to convince business and board executives of the value of increasing – *yet again* – the department’s budget to provide the required level of assurance. We decided to explore the question of what manner of arguments are commonly brought to bear on budgetary discussions, and which of these appear to curry most favour with decision makers.

### **Establishing the need and role of ethics programmes**

The budget allocated to support structured programmes that help assure adherence to policies and procedures, and the respect of ethical behaviour in an organisation, has become a significant burden for many corporations. Add the continuous interaction between those officers mandated to effectuate monitoring and control of business activities and decision-taking, and the perception of “cost to the

business” is raised even further, as those subjected to the attentions of “nay-sayer” compliance departments, are reminded of their obligations and responsibilities. Why – some business leaders ask – do we need to engage costly staff and time-consuming procedures to verify what ought to be a given. No normal leadership considers itself to be without integrity; nor do most expect their staff to act outside such perceived, and “obvious” norms. In these days of austerity, with income

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## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

generating departments expected to reduce costs, and cost centres under severe pressure to “do more with less”, rare is the case of a compliance or ethics officer budget request being greeted with enthusiasm by decision-makers. The more common experience is to encounter forms of resistance ranging from rigorous demands to apply a narrower risk-based focus, to a sceptical mindset; questioning if the ethics or compliance programme adds value to the organisation, and suspicious of the objectivity of the persons both advocating and requesting resources to fulfil it. How can the ethics practitioner best engage with decision-takers under such circumstances? It’s a question asked by many, and answered by few.

We therefore engaged in a limited benchmark review to try to answer two questions:

■ What methods currently constitute common practice in communicating the value of investment in an organisation’s ethics programme in order to gain the support of those who control the budgetary purse strings?

■ Of the various methods and arguments presented to decision-takers, which appear to generate positive support for the ethics programme budget requested, and which do not?

### **Method**

Invitations to participate in a review of ten questions addressing the above matrix of queries were issued to a closed network of senior compliance professionals and corporate board members of different companies during the month of February, 2013. The results and main conclusions have been posted in summary form on the Journal<sup>1</sup> website and are the subject of this article.

### **Limitations**

Due to the limited size of the review, the results harvested can neither be considered statistically significant nor scientifically reliable. However, as a benchmark review amongst peers, it finds virtue in illuminating what management information is commonly presented to explain the outcome of budget expenditure, and which of these

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1 [www.journalofbusinesscompliance.com](http://www.journalofbusinesscompliance.com)

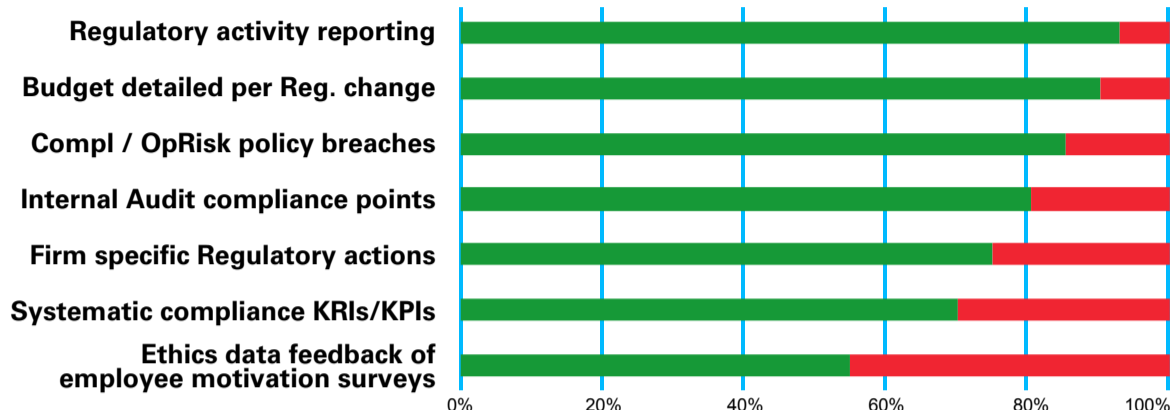
## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

### GLOBAL OBSERVATIONS

Survey results are indicative only and compiled for discussion purposes only

■ Yes ■ No

### MOST POPULAR REPORTING STANDARDS USED



are more or less well received by the decision makers. It should also be noted that the participants in the survey were overweight in the category of financial services.

### Headline conclusions

Feedback received in this value of compliance review, included the following:

- There is a high level of communality in the nature of management information provided to decision makers; popularity seemingly driven by the ease with which ethics departments are able to self-generate or gain access to information provided by other support departments.
- The greater the granularity of information provided, the higher the level of positive influence is achieved. There would appear generally to be a desire for evidence-based argumentation on behalf of decision makers unimpressed by general observations, references and assertions presented in efforts to explain the value of, or need for further investment in ethics programmes.

- External evaluations by consultants or other commercial third parties would appear to be less influential than might be expected. Internal feedback from “independent” functions such as Internal Audit are thought to be more influential to decision makers than “independent” external advisors.

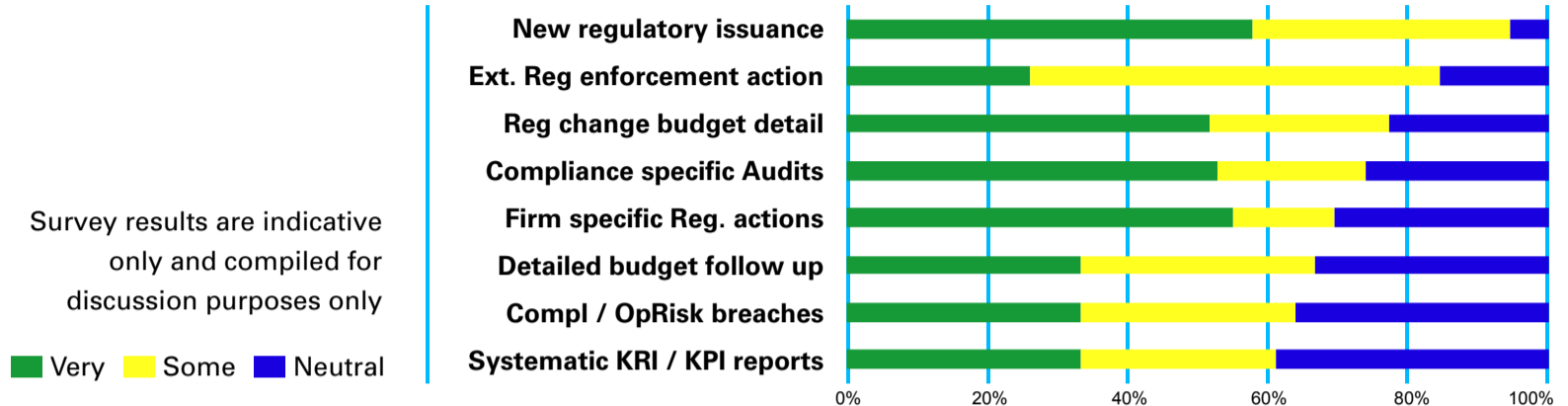
### Common reporting practices

Apart from the obligatory comparisons with historic budgets that make up most budget allocation processes, respondents to the review reported that the most common form of information provided to management, to convince them of the value of compliance budgets, was to highlight the activity of regulators and/or the legislature in issuing new and changing regulation. A close second is to raise awareness of enforcement actions against peers that had been found wanting in the eyes of the authorities.

Such generalised information would – in most cases – be no more than a reminder of information already known to the executive, and one might assume therefore of little actual value-added.

COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

GLOBAL OBSERVATIONS ■ MOST INFLUENTIAL REPORTING MEASURES



However it remains a ritual necessity and interestingly, is reported still to be one of the most influential factors on budget decision makers.

Beyond such generalities however, it seems the popularity of providing more granular and organisation specific risk and performance indicators declines in line with the complexity of obtaining or compiling such information. The bread and butter practice of operational risk and business units to provide systematic key risk and/or performance indicators for example, appears not to be entirely commonplace amongst compliance and ethics functions.

**What works?**

The Benchmark review requested participants to consider the nature and source of their supporting materials in the budget discussion and to provide an indication as to the extent to which these generated some or very positive influence, or were merely ineffective / neutral in impact. The review covered nine different categories outlined on the right, and addressed in this article.

**THE BENCHMARK REVIEW CATEGORIES**

- Internal and historic budget benchmarks
- Internal adequacy of resource indicators
- External adequacy of resource benchmarks
- The indirect regulatory threat
- Policy breaches as a compliance culture indicator
- Systematic dashboard reporting
- Project based approval methods
- Staff / Employee Motivation Surveys
- Inclusion of ethics KPIs in staff appraisals

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

### **Internal and historic budget benchmarks**

**DO YOUR BUDGETS PROVIDE SUFFICIENT GRANULARITY TO BE ASSOCIATED WITH INDIVIDUAL BUSINESS OBJECTIVES?**

As mentioned above, the use of historic budgetary data is part of the course of most budget approval processes. A small number of firms however reported that there was no regular, consolidated budgetary review process in place – decisions being taken instead on an ad hoc, needs-based approach. This practice seemingly reflects an acceptance of compliance programmes constituting a necessary cost, and part of doing business, as opposed to a regulatory inspired add-on, “on top of” normal business expenses frequently seen elsewhere.

*The more specifically the budget could be associated with individual business activities, the greater the recognition there was of the usefulness or necessity of the investment*

Whereas being reminded of the expense of past investments in ethics programmes generally fails to inspire any significant

support for continued expenditure, and in a few cases even gave rise to some hostility, the review revealed a trend indicating that the more specifically the budget could be associated with individual business activities, the greater the recognition there was of the usefulness or necessity of the investment. Granularity it seems, is a friend of the compliance budget process.

### **Internal adequacy of resources indicators**

**ARE THE TOPICS OF ETHICS AND COMPLIANCE ADEQUATELY ADDRESSED IN AN INDEPENDENT MANNER BY SYSTEMATIC INCLUSION IN INTERNAL AUDIT ACTIVITY?**

Much of the input received in this review indicated a lack of analytical assessment capacity within the ethics department itself to produce their own, indisputable and evidence-based diagnosis of the adequacy of resources placed at their disposition. Where such capacity is available however, the weakening of persuasion power by arguing your own case appeared manifest, and experience showed that it is the independent opinion

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

of the internal audit department that appears to hold the greatest sway over the perceptions of budgetary masters.

*Firms where internal audit reports systematically address compliance adequacy, as opposed to those which only make incidental reference to compliance weaknesses, enjoy stronger support in budget discussions*

The review indicated that whereas most respondents do make reference to sporadic, incidental comments and observations communicated in internal audit reports (“IARs”), a fewer number actually have IARs systematically address compliance adequacy in all reports. The review indicated that firms where IARs systematically address compliance adequacy, as opposed to those which only make incidental reference to compliance weaknesses, enjoy stronger support in budget discussions.

Review feedback confirmed that another indicator of workload that has gained in popularity and is equally effective in generating positive influence in the decision process, is to provide detail

on the levels of regulatory queries and other activity directly impacting the organisation, and consequently the compliance department itself.

### **External adequacy of resource benchmarks**

**HAS YOUR ORGANISATION FULLY EXPLORED HOW TO ENGAGE THE EXECUTIVE IN THE USE OF EXTERNALLY SOURCED BENCHMARKS AND EVALUATIONS?**

A wise man once said, “The work of a compliance officer is a lonely one.” Agree or not, one of the most useful benchmarks to any compliance organisation, is one that positions the adequacy of one’s own measures with that of others. These have two common sources, namely (i) publically available benchmarks and (ii) informal, but personal peer group discussions and comparisons. Whereas these might provide great comfort and inspiration to the ethics practitioner him/herself, respondents to the review indicated some, but still limited interest by the executive in such information, and correspondingly mediocre influence on decision taking.

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

*The apparent greater impact of the occasional commissioning of external evaluations – as opposed to regular and systematic review and reporting – indicated the value of the unusual above the routine*

An interesting feedback, was the relatively low extent to which the commissioning of external, independent expert reviews of resource adequacy and effectiveness generated positive influence on budget decision makers. Although not dismissive, impact appeared to be less than that provided by systematic reviews of adequacy performed by the organisation's own internal audit department. A further observation worthy of some consideration was the apparent greater impact of the occasional commissioning of external evaluations – as opposed to regular and systematic review and reporting – that indicated the value of the unusual above the routine.

### **The indirect regulatory threat**

**IS IT POSSIBLE TO LINK EXTERNAL REGULATORY ACTIVITY MORE SPECIFICALLY WITH CONSEQUENCES AND DETAILED IMPACT ON THE BUSINESS ACTIVITIES OF THE FIRM?**

Increasing, or maintaining awareness of the extent of regulatory activity appears standard practice across all organisations. It is also seemingly uniformly essential to some understanding by decision makers, if not a strong influence, over the necessity of investments in ethics programmes. There was a distinction made between the impacts of general “regulatory issuance” activity as opposed to “enforcement activity”, where a few respondents actually indicated a negative impact in the budget discussions; perhaps a perception of being placed under threat and duress in the budget process – or alternatively a self-conviction that such things “would never happen here”.

*Positive effects were observed from venturing into specific costing exercises with regard to the future impact of regulatory activity*

In general however, some positive effects were observed from venturing into specific costing exercises with regard to the future impact of regulatory activity, again confirming the power of conviction provided by granularity.

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

### **Policy breaches as an indicator of compliance culture**

**HAVE THE VARIOUS KRIs/ KPIs OF OTHER MONITORING DEPARTMENTS (RISK MANAGEMENT, IT SECURITY, HUMAN RESOURCES, ETC.) BEEN FULLY CONSIDERED FOR PROXY INDICATORS OF ORGANISATIONAL ETHICS CULTURE?**

A significant number of respondents to the review report on compliance and operational risk breaches as a proxy indicator of the standing of the compliance culture of the organisation. Where specific instances of ethical misconduct are evidenced (as opposed to “accidental” operational risk breaches), this – perhaps unsurprisingly – generates greater positive influence on the overall willingness of decision makers to accommodate budget requests. Notably however, such instances were rarely quoted in specific support of the budgetary process itself.

### **Systematic dashboard reporting**

**CAN MORE BE DONE TO EVIDENCE RISK TRENDS AND PROGRAMME PERFORMANCE IN A SYSTEMATIC WAY?**

Only one in five respondents confirmed their systematic provision of dedicated ethics or compliance key risk and/or performance indicators to decision makers. Whereas it was outside the scope of the benchmark review to make comparisons of the quality and appropriateness of such data, an essential observation was that decision-takers generally disregarded KPIs and KRIs unless systematically presented on a regular basis and in a consistent manner. To fail to do so appeared to reduce the influence significantly, by a ratio of almost 3:1.

*Decision-takers generally disregarded KPIs and KRIs unless systematically presented on a regular basis in a consistent manner*

### **Project based approval methods**

**WOULD THE USE OF A MORE PROJECT MANAGEMENT STYLE APPROACH TO CERTAIN BUDGET REQUESTS HIGHLIGHT THE “INVESTMENT” NATURE OF EXPENDITURE, AS OPPOSED TO “GENERAL OVERHEADS” COSTS OF BUSINESS AS USUAL?**



## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES



Four out of five respondents confirmed the use of project based budget accounting techniques in their budget approval and follow-up process. A significant minority reported that they employed an incremental, case-by-case approach to individual project budget approval requests. The observation made is that this incremental approach met with far greater (100%) positive support for their requests, of which nearly half were termed as “strongly” influencing the decision. In marked contrast, those requesting a simultaneous, “one-shot” consolidated approval of all projects needed indicated only a 50% positive (as opposed to neutral) influence on the decision process. This same group believed that such influence was only to be termed “strong” in 17% of cases, indicating that when decision-takers have the time and capacity to consider the detail of requests, they find greater comfort of its necessity and value than when confronted with a broader, more global perspective.

*When decision-takers have the time and capacity to consider the detail of requests, they find greater comfort of its necessity and value*

### **Cultural diagnostic surveys**

**HAVE THE POSSIBILITIES OF EXTRACTING GENERAL ETHICS RELATED FEEDBACK FROM, AND THE INCLUSION OF SPECIFIC ETHICS RELATED QUESTIONS IN EMPLOYEE SURVEYS BEEN FULLY EXPLORED?**

Many large companies conduct annual surveys amongst their staff to ascertain the level of employee satisfaction, motivation or morale. These are generally conducted by the Human Resource (“HR”) department and measure many aspects of work life impacting turnover, loyalty, and awareness of corporate values, organisational trust and more. These exercises are expensive and provide vital information on the attitudes of a major stakeholder in the enterprise.

*Most ethics departments have not managed to collaborate with Human Resources on survey content*

These surveys are construed and designed for the purposes of HR management, but also contain many elements that are relevant to the ethical climate of the organisation, even if not specifically tailored

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

for the task. There are service providers who specialise in the measurement of the main drivers of ethical climate, such as trust between colleagues, recognition of organisational justice, or freedom to speak-up about concerns within the firm. However, only a few participants in the review confirmed making use of such ethics dedicated surveys. Where organisations conduct HR run employee surveys, most ethics departments have not managed to collaborate with HR on survey content. A significant minority of respondents however, confirm having a number of specific ethics and compliance culture related questions included in the HR survey. Where this was the case, the feedback was considered to have some positive influence on decision takers. As one might expect however, those firms who did report conducting specific ethics culture surveys confirmed them as having a greater degree of impact on decision-takers than the “piggy-back” approach of collaborating with HR in their project. Irrespective of which approach might be adopted, employee surveys of this nature normally contain relevant information on the culture of the organisation. As a minimum, ensuring a good understanding

of the cultural feedback from such surveys would appear to be time well spent in terms of helping management understand the ethical evolution of culture and attitudes amongst staff.

### **Ethics appraisals of staff**

**IS ETHICAL CONDUCT SUFFICIENTLY HIGHLIGHTED IN THE WORK OBJECTIVES OF EMPLOYEES, AND ACTUAL PERFORMANCE PROPERLY REPORTED TO THE EXECUTIVE?**

During recent years, there has been regulatory pressure, and some tendency to include ethical performance as part of the annual employee appraisal process. Again requiring good collaboration with the HR department, three quarters of our respondents confirmed their firm included ethical evaluation in their employee performance review. Most of these firms considered that the mere inclusion of this as a performance expectation, encompassing as it does objectives and results measurement, had a positive influence on company understanding of the need for ethics expenditure. Where the results from such evaluations were grouped and analysed, and presented to

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

decision makers as a discussion point, the impact of this measure is reportedly considerably heightened.

*The mere inclusion of ethical conduct as a performance expectation had a positive influence on company understanding of the need for ethics expenditure*

### **Drawing conclusions**

As mentioned, the size of this review prevents it being considered a scientifically reliable, statistical exercise, but rather a benchmark review amongst a number of peers. It has however, given the opportunity to share some valuable insight into what methods are commonly used and relied upon to communicate the importance, value and impact of compliance and ethics programmes and the budget dedicated to them. We have also been able to derive a number of observations related to the effectiveness of such methods and measures in communicating the value and necessity of ethics programmes to those who control the purse strings. Extracting and pondering on the outcome of this review

is only a small part of the value of this exercise however. The real value lies in the use that you, the reader, make of it. We, the Journal of Business Compliance, challenge you to consider the questions raised and use them to evaluate if the manner in which you – the ethics worker – or you – the budget decision-taker – seek to understand and communicate on the value of the considerable investments required to effectively (i) influence, manage and verify the organisational culture of your activity and (ii) to minimise the risk of non-compliance to your reputation and ability to efficiently conduct your business. We sincerely hope that your ensuing discussion of these topics will positively influence the quality of outcome of your next budgetary decisions.

*Pondering on the outcome of this review is only a small part of the value of this exercise however. The real value lies in the use you, the reader, make of it*

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

However, in all humility, we leave the final word with the comments made by one decision taker who kindly participated in the benchmark review:

*“Preparation of the firm’s budget is typically a process of application, negotiation and allocation.”*

*“The reaction of executive management in the negotiation and allocation phase is likely to be influenced by the accountants who will look at the targeted bottom line for the firm, relativities to previous years, relativity to other control units or to the budgeted performance of the firm as a whole.”*

*“That is why compliance budgets should be signed off, not by management, but by the Board.”*

– Comment by a review participant

We extend our gratitude and thanks to all those who contributed their valuable time to participate in this benchmark review.

## COMMUNICATING THE VALUE OF ETHICS PROGRAMMES

### COMMUNICATING THE VALUE OF COMPLIANCE REVIEW - DISCUSSION POINTS

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- Are the topics of ethics and compliance adequately addressed in an independent manner by systematic inclusion in internal audit activity?
- Are the topics of ethics and compliance adequately addressed in an independent manner by systematic inclusion in internal audit activity?
- Has your organisation fully explored how to engage the executive in the use of externally sourced benchmarks and evaluations?
- Have the various KRIs/KPIs of other monitoring departments (Risk Management, IT Security, Human Resources, etc.) been fully considered for proxy indicators of organisational ethics culture?
- Can more be done to evidence risk trends and performance in a systematic way?
- Would the use of a more project management style approach to certain budget requests highlight the “investment” nature of expenditure, as opposed to “general overheads” costs of business as usual?
- Have the possibilities of extracting general ethics related feedback from, and the inclusion of specific ethics related questions in employee surveys been fully explored?
- Would the use of a more project management style approach to certain budget requests highlight the “investment” nature of expenditure, as opposed to “general overheads” costs of business as usual?
- Is ethical conduct sufficiently highlighted in the work objectives of employees, and actual performance properly reported to the executive?

# THE EFFECTIVE PRACTITIONER HUMAN RESOURCES HAVE A VOICE IN ETHICS TOO!



*Natalie Evenas\**

Research shows that a reputation of integrity is among the top ten drivers of employee engagement: that communicating to employees the organisational stance on corporate ethics and social responsibility drives engagement.

■ Therefore it is critical that Human Resources (“HR”) play a leading role in defining and promoting ethics at all levels of the organisation. As a strategic business partner, the HR Department can help to prevent ethical crisis situations arising by identifying organisational values and linking these values to employee behaviour. Specifically, HR is able to link values and behaviours, disseminate guidelines, and create accountability for ethical behaviour through ownership of multiple functions, including the following: employee diversity, relations and development; corporate policy, training, performance management, and compensation.

I wish to explain how HR, by leveraging

performance management systems, compensation practices, and reward and recognition programs in particular, is especially well placed to influence the ethics of employee behaviour proactively and manage problem situations, as explained below:

## **Linking Ethics to Performance**

### **INCLUDING ETHICS CRITERIA IN PERFORMANCE MANAGEMENT**

The link between ethics and performance can be established at the organisational, leadership, and individual levels through inclusion of ethics criteria in regular HR processes of goal setting and performance review.

\* **Natalie Evenas** is in charge of Strategic Human Resources Management at KPMG in Western Switzerland.

## HUMAN RESOURCES HAVE A VOICE IN ETHICS TOO!

### UTILIZE VALUES-BASED PERFORMANCE MANAGEMENT.

If ethical conduct is an organisational value, HR can incorporate it into formal performance management through the following process:

- Determine measurable competencies that transform conceptual ethics into actual behaviors.
- Link performance appraisals to the practice of organisational values to hold every employee accountable for ethical behavior.

### **Train employees to ethical behaviors and expectations**

Ethics can be taught, and behaviours conditioned to incorporate the values of the firm and can consequently be used to keep an employee from causing the next big corporate scandal. After all, a business can't survive if it can't be trusted to do the right thing. So ethics, like any other academic discipline, is fundamental to any business's development. Like any skill that can be learnt and improved upon, it requires active engagement and management. HR is uniquely equipped to design and offer annual workshops and

training in organisational behaviour issues such as ethics, providing opportunity for employees to immerse themselves in ethics training.

The goal should be to share a diversity of experiences in an interactive setting and to develop new techniques to enable employees to raise their own ethical awareness and ability to make rational, ethical choices in the business world.

### **Embed the Ethics policy at all levels.**

To create a true culture of ethics, it must be evidenced that the matter is a priority with the executive. By ensuring a top-down promotion of ethics, having clear in-house procedures, communicating regularly around internal best practices through an internal staff newsletter, HR can facilitate and amplify the leadership's message through the organisation, and assist in addressing ethical violations across all levels of the organisation.

### **Linking Ethics to Rewards**

It is commonly agreed amongst organisational behaviour theorists that behaviour at the workplace is heavily motivated through the use of incentives

## HUMAN RESOURCES HAVE A VOICE IN ETHICS TOO!

and reward systems. However, how often is it not the case that the process of goal setting is too narrowly focused on outcome only, neglecting quality of performance or the broader interests of the organisation? There are ways in which an HR partner can provide better results in changing some of the approaches to setting and measuring objectives.

### SHIFTING COMPENSATION FOCUS AWAY FROM THE SHORT-TERM

A balanced incentive strategy can discourage unethical business practices that result from attempts to inflate short-term equity prices.

### BALANCE SHORT- AND LONG-TERM INCENTIVES

HR should recalibrate compensation plans focused on short-term performance, which can tempt employees to adjust the bottom line through unethical means in order to gain performance pay.

### RECOGNIZING GOOD EXAMPLES

HR has an opportunity to foster awareness and support of corporate ethics through the offer of monetary and non-cash rewards to reinforce recognition of ethical

behavior. HR can design ethics reward programs, including bonuses, spot awards, and organisation-wide, constant verbal and written recognition for employees that display great effort toward ethical behavior.

### HR as a management information source

*“...great risk management is simply the movement of information from the informed to the empowered.”*

Finally, the most important thing that an organisation can do to sustain its compliance risk management capabilities is to promote and guide the flow of important information to the right decision points within the organisation. As one organisation puts it, “...great risk management is simply the movement of information from the informed to the empowered.” It is critical therefore, to have a close collaboration between the compliance, operational risk departments and HR.

Strong assurance functions, effective governance structures and highly ethical



## HUMAN RESOURCES HAVE A VOICE IN ETHICS TOO!

executive decision-making are necessary to effectively manage emerging risk issues, but they may prove lacking without clear and timely information being available to it.

To optimize this information flow, HR can play a critical role in activating and maintaining employee information networks, be these through whistle-blower like initiatives, everyday interaction with employees or more open social media networks. Employees are the eyes and ears of the organisation, because they have access to every client, transaction, product, and peer employee. The closest organisational function to an organisations employees, is the Human Resource officer! ■

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**Natalie Evenas** has more than 15 years international experience as an HR professional (Recruitment & Involvement of Personnel Manager, HR Business Partner, Management Development Project Manager and Senior HR Manager) in various sectors and has worked for the Headquarters/ Research & Development Center of Valeo in the Automotive Industry (France), in the Financial Services Industry (Luxemburg), and joined the Professional Service Firm environment beginning 2007. Within KPMG, Natalie is in charge of Strategic Human Resources Management in the Western part of Switzerland.

# CASE STUDY

# SIEMENS

# COMPLIANCE

# - PART III

## CASE HANDLING PROCEDURES



*Rainer-Diethardt Buehrer and Antonie Wauschkuhn\**

In the inaugural issue of the Journal of Business Compliance (01/2012), we presented a case study on the so-called Corruption Scandal of 2006 involving Siemens. The remediation of the findings of the extensive investigation into the compliance failures which led to the wholesale change of firm's executive management have been discussed in subsequent issues, covering the organisation of compliance (01/2012), the Siemens policy framework (01/2013) and now, in this issue the organisation of investigations and remediation at the firm. We are pleased to be able to share these lessons learnt by Siemens through a trying and difficult process, and we thank them for their candour and generosity in doing so. In this article, Rainer-Diethardt Buehrer and Antonie Wauschkuhn explain how Siemens have organised themselves to encourage speaking up by both staff and third party clients and suppliers, including an unusual Amnesty Programme to help effect culture change. The article is also extremely interesting for anyone connected with ensuring investigations are reliably carried out and that consequences of findings are diligently, and fairly dealt with in a manner supporting objectives of maintaining a sense of organisational justice.

### Identifying Misconduct

#### CHANNELS FOR REPORTING MISCONDUCT

As well as the prevention functions already discussed in the previous issue of this Journal, the encouragement of staff and external parties to assist in the fight

against corruption by “speaking-up” is an important objective of Siemens. To this end, the Compliance Helpdesk's Tell Us includes a “whistleblower hotline” through which potential Compliance violations can be notified. This is available 24 hours a day in almost all languages for employees and external,

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## CASE STUDY – SIEMENS COMPLIANCE – PART III

third parties all around the world, and is operated by a provider, which is independent of Siemens. As a result it is possible to enable anyone who has a concern over potential misconduct to notify the Compliance Helpdesk in a standardised report form immediately. As the system allows for anonymity and information security, the Helpdesk cannot trace this information against the will of the informant. All information received by the Helpdesk is recorded on the spot and then examined by experts in the Compliance Legal Department to determine whether there are reasonable grounds for suspicion that would justify taking further measures or which call for investigation.

Since early 2007, Siemens has also had an independent Ombudsman who can be contacted in person. In 2012, some 670 reports were made to Tell Us and to the ombudsman (many of which relate to personnel issues); the majority of these reports have required a follow up or further investigation. The Tell us function is under the responsibility of the Compliance Legal department, which is also responsible for the legal examination and processing of the reports.

### THE AMNESTY PROGRAMME

At the time of the scandal, Siemens faced the challenge of rooting out past practices no longer acceptable to the future company. In order to signal change and to encourage staff to speak up and assist in cultural change, Siemens established its own Amnesty Programme, an employment law-related measure that deserves comment.

The independent investigation undertaken by the US law firm Debevoise & Plimpton to investigate past corrupt practices at Siemens was aided by an amnesty programme agreed with the US authorities and the Office of the Prosecutor General in Munich which ran from October 31, 2007 to February 29, 2008. This offered immunity to lower-level employees willing to cooperate in full with the investigation and to disclose corrupt practices. The amnesty offer included a waiver of damage claims and of unilateral dismissals by the company. A total of 123 employees responded to the amnesty programme, most of whom were able to provide valuable information which contributed to the clarification of Compliance violations in the past, and who were therefore granted amnesty as a result.

## CASE STUDY – SIEMENS COMPLIANCE – PART III

### Compliance Case



### INVESTIGATION OF COMPLIANCE ALLEGATIONS

A key finding of Siemens' assessment of malpractices and of the deficits of the Siemens Compliance System pre-2007, was that existing evidence of misconduct was not investigated soon enough or with the necessary resolve. Consequently, upon the introduction of the new Compliance System, a decision was taken to create a special investigation process for Compliance violations and to furnish the Compliance Investigations department with the necessary resources to conduct professional investigations.

In addition to allegations of serious compliance violations received via Tell Us reports and the Ombudsman, notifications are occasionally derived from other sources, such as investigating authorities. All files are handled centrally for the entire company by the departments reporting to the Chief Counsel Compliance, who is responsible for the governance of the entire case handling and related processes. This mandate provides the legal basis for all compliance investigations conducted at Siemens, and each investigation, whether undertaken by the Compliance Investigation Office or by Forensic Audit,

enjoys the full support of experts from the Compliance Legal Department.

The investigation process (see above) provides the operational basis for all compliance investigations, and maps out the different phases of each investigation. This not only facilitates clarity and guidance as regards the daily work of an investigator, it also demonstrates a high standard of transparency. The investigation process is also based on sound principles enshrined within the rule of law, and includes 'the presumption of innocence', and the 'right to be heard'.

The objective of every compliance investigation is threefold:

- To address allegations of wrongdoing professionally, by establishing the facts;
- To protect and preserve the integrity of the investigation, and the identity of the persons involved; and,
- To identify, mitigate and manage any risks to the business.

The protection of confidentiality related to persons or content is also supported by the Employee Representative Council,

## CASE STUDY – SIEMENS COMPLIANCE – PART III

and also demonstrates respect for the data privacy provisions.

### GLOBAL CASE TRACKING

The information about potential Compliance violations notified to the Compliance Organisation is processed and followed up on a company-wide basis – depending on the seriousness of the allegation – centrally in the Compliance Legal Department or by the respective Compliance Officer using a uniform Case Tracking Tool. Official investigations performed worldwide must be reported centrally, as well as information about violations of anti-corruption legislation or of competition law, and activities that may potentially have material financial consequences or threaten to damage the reputation of the company. All cases entered in the system are assessed (in terms of their impact on financial statements) by the Finance Department, Tax Department and the external auditors of Siemens, and these assessments are subsequently incorporated into the Compliance reports to the Managing Board and to the Supervisory Board's Compliance Committee.

### COORDINATION OF THE REGIONAL OFFICES

As mentioned, the Office dealing with Compliance Investigations is centrally managed from the Munich Headquarters, with regional offices in China, Russia, Mexico and the United States. This regional construct facilitates an approach that allows for a closer collaboration with businesses in the field, but also introduces a wider cultural and language mix of staff to serve the local business entities better. The Office of Compliance Investigations employs a risk-based approach, where files that represent the greatest risk to the reputation of the Company, or harm to its employees and business opportunities, receive the highest priority. This greater focus on risk, the identification, mitigation and consequent management thereof, complements the added-value that the Office of Compliance Investigations brings to the business community. Consequently, each file is finalised only by virtue of a written report, clearly addressing the allegation, and in the case of findings, is accompanied by recommendations aimed at preventing repetition of the identified failures.

## CASE STUDY – SIEMENS COMPLIANCE – PART III

Compliance Investigations produces 3 types of reports:

- Closure reports: where the allegation or issue cannot be resolved for one or other reason;
- Clearance reports: issued when the evidence obtained during the investigation does not substantiate the matter, and as a result the persons will be formally cleared of any wrongdoing and their management is advised accordingly; and
- Investigation reports: which are issued when the allegation, or parts thereof, has been substantiated by evidence.

### SEPARATION OF INVESTIGATION AND REMEDIATION

The outcomes of completed investigations as established in the reports are addressed by another group of specialists from the Compliance Organisation, the Remediation Department. The Remediation Department assesses whether the weaknesses identified have been remedied and whether there are any structural shortfalls in the implementation of the Compliance System overall. Compliance investigations also serve as

an important source of material for the Compliance risk analysis undertaken by the Risk Group.

Finally, the Compliance Organisation has issued guidelines for all corporate units, which prohibit fact finding clarifications within the company being conducted “without regard to the consequences”, and set out clear standards for the fair and respectful treatment of employees within the context of fact finding clarifications or investigations.

### Responding to Misconduct

One of the perennial challenges of properly managing the ethical culture of any organisation, is dealing with the consequences of misconduct. The creation of a governance structure to define policies, train and broadcast company values and the design and roll out of control procedures are in part academic, or intellectual activities – there are no victims to face, and consequences are largely measured by the size of the budget allocated to the enterprise. Once prevention and detection measures identify an individual however, what is essentially a teaching and policing exercise mutates into the role of judge,

## CASE STUDY – SIEMENS COMPLIANCE – PART III



jury and executioner. Siemens has sought to establish an appropriate governance structure to ensure that organisational justice is served openly and fairly, and without prejudice.

### CORPORATE DISCIPLINARY COMMITTEE

As explained in the Case Study of the corruption scandals which beset Siemens through the start of this century<sup>1</sup>, prior to 2007, Siemens rarely responded to corruption or to unlawful competitive practices with disciplinary sanctions. The new Siemens Compliance System changed the situation fundamentally. The Corporate Disciplinary Committee (CDC) was set up in August 2007 and is tasked with the formal assessment of misconduct by members of management identified in the course of internal or official investigations. It is the responsibility of the CDC to issue binding recommendations for action. The employment law aspects of the procedures are prepared by the Compliance Discipline and Integrity Department, which also monitors their subsequent implementation by the HR

departments in the responsible units. The CDC is composed of Siemens AG top management. It is chaired by the General Counsel of Siemens AG, who is also a member of the Managing Board. Other members include the Managing Board member responsible for the Human Resources portfolio (Deputy Chairman), the Chief Financial Officer, the Head of Corporate HR, the Head of Corporate Development Executives, the Chief Compliance Officer and the Chief Counsel Compliance. In addition, a representative from senior management and a leader from the relevant HR organisation are selected to participate in the CDC process. The composition of the CDC reflects the seriousness and consistency Siemens applies in the disciplinary remediation of non-compliant behaviour.

### THE CORPORATE DISCIPLINARY COMMITTEE IN ACTION

Around 335 decisions have been taken in the CDC since it was set up – from informal warnings through to immediate dismissal. The Compliance Discipline and

1 Journal of Business Compliance Issue 01/2012

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Integrity Department also keeps statistics on employment law-related measures taken throughout the company whenever Compliance violations occur which are not dealt with by the CDC, because no member of higher management is affected. Around 270 labour law related measures with reference to compliance worldwide were taken in Fiscal Year 2012; approximately 27% thereof resulted in notices of dismissal.

### **Conclusion**

The importance of having a sound organisation in place, able to manage the various tasks and challenges, while encouraging an appropriate ethical and compliance-minded company across many borders and cultures is evident. This organisation must provide clarity in expected employee behaviours through the existence of clear, accessible and practical policies and procedures to assist the various business activities of the firm. However, whereas procedures must and are supported by routine and systematic control measures, it is essential that the firm is welcoming in listening to the concerns of its employees in a manner that provides security from the fear of

workplace retaliation and assurance that such notifications as are received will be acted upon.

By putting in place a reliable and transparent whistle-blowing system with immediate and independent investigation procedures, employees understand the importance granted by the firm to the protection of its integrity and reputation, supported as it is by an executive providing not only the necessary resources to manage these measures, but also the will to make them happen. ■

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**Rainer-Diethardt Bühner** joined Siemens in February 2008 from the International Criminal Police Organisation, ICPO - Interpol, in Lyon, France, at the Corporate Head Office in Munich, tasked to create a new Compliance Investigation Office with a mandate to conduct compliance investigations globally.

Dr. **Antonie Wauschkuhn**, Head of Compliance Legal, Siemens AG, holds a doctorate in criminal law and heads the Compliance Legal Department of Siemens AG with global responsibility for managing criminal and administrative proceedings, investigating and overseeing the corporate disciplinary process. Prior to joining Siemens, Antonie was a Senior Legal Counsel Corporate Legal/Compliance at Nokia Siemens Networks and in private practice at Baker & McKenzie and Gibson, Dunn & Crutcher LLP.



# REGULATORY OUTLOOK

## WHITHER EUROPE: A UNITED STATES OF EUROPE V THE BALKANISATION OF THE STATES OF EUROPE?



*Alexandria Carr\**

In an article in the February 2013 edition of this Journal entitled “Motivating and Dealing with Legislative Innovation in the EU: The Changing Face of Financial Services Regulation under the Force of Crisis”, Alexandria Carr considered how the EU’s initial response to the global financial crisis has been a move towards pan-European solutions. In this article, using the financial crisis as the example, she looks into the flip-side developments observed within Member States and the extent to which this push towards further European integration is being met by increasing resistance. The challenges of crisis demand a sense of strong unity. Where confidence in one’s “allies” is lacking however, each looks to their own “national interest” and the threat of the European project starting to fragment starts to appear. She explains the impact the future development of the EU will have on all those active in European markets and the need for ever greater engagement with the EU’s legislative process.

### **Supranational regulation v national supervision**

In the article “Motivating and Dealing with Legislative Innovation in the EU”, consideration was given to the EU’s immediate response to the financial crisis and how it signalled a deliberate move from the localised solutions of individual Member States towards a more pan-European response. The creation of the European System of Financial Supervision

consisting of a European Systemic Risk Board and three European Supervisory Authorities (“ESAs”), and an evolving legislative process which involved the greater use of directly applicable regulations, amongst others, were cited as examples of this.

Yet as the EU is promoting greater harmonisation, a trend towards Balkanisation in the banking and financial sectors has been developing. This is partly

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a result of a loss of confidence in the effectiveness of EU measures, which encourages a retreat to domestic interests and efforts to reduce exposure to what are perceived to be vulnerable markets. The prospect of pan-European banking union and supervision is being countered by the protectionist behaviour of national supervisors who are taking a restrictive view on the transferability of group capital, and seeking to trap capital and liquidity in their national markets.

In 2012, the USA's Federal Reserve proposed the imposition of heightened prudential requirements on the US operations of large foreign banks having global consolidated assets of \$50 billion or more, regardless of the size of the US operations. In essence, these foreign banks would be required to establish US intermediate holding companies (as opposed to maintaining branches whose assets remain freely transferable to and from company head office). As a US legal entity, these holding companies would be subject to the Federal Reserve's capital requirements on a consolidated basis,

and liquidity standards would be applied without regard to whether the foreign bank could more effectively manage liquidity, across borders and in various currencies, on a global basis.

The UK regulator, the FSA, has also sought to protect UK depositors and markets both by locking down capital and liquidity in the UK, but also by encouraging a move from branches to subsidiaries amongst banks. For example, it has negotiated the establishment of formal firewalls between the UK subsidiary of a major Eurozone bank and the rest of the Group, significantly reducing the possibility of problems arising elsewhere or systemic risk involving the Group impacting on the UK subsidiary<sup>1</sup>. Further, a recent FSA consultation paper proposes that deposit-taking branches of banks from third countries which operate national depositor preference regimes, like the United States, should either take deposits in the UK through a subsidiary established in the UK or establish alternative arrangements that ensure that UK depositors are no worse off than depositors in

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1 Specifically, the regulatory ring-fence restricts the provision of liquidity and capital by the UK branch to the rest of the Group and limits the extent of exposures to the Group that it can assume.

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the home jurisdiction if the bank fails<sup>2</sup>. The UK's top prudential supervisor, Andrew Bailey, has commented recently that this trend will not disappear until there is a system in place that will permit the cross-border resolution of globally systemic banks.

*Despite the integration of financial markets, all markets are not the same and national interest is still a dominant influence*

### **The Eurozone – a driver of a two-speed Europe?**

The Balkanisation of the banking system reveals that, despite the integration of financial markets, all markets are not the same and national interest is still a dominant influence. The creation of the euro in 1999 was a milestone in EU integration: it is now used in 17 of the 27 Member States and, of the 10 Member States outside the Eurozone,

only 2 of them, the UK and Denmark, have a permanent derogation from eventually doing so. All future members of the EU will be obligated to adopt the euro once they meet the convergence criteria<sup>3</sup>. Yet within the Eurozone there remain significant disparities between the Member States. More than 76% of the Eurozone's total GDP (and almost 15% of world GDP) is accounted for by just four countries (Germany, France, Italy and Spain) with Germany, followed by France, being by far the major contributor. At the other end of the scale, the Eurozone's six smallest countries (Malta, Estonia, Cyprus, Slovenia, Luxembourg and Slovakia) accounted for just 2% of the Eurozone's overall GDP in 2011.

The problems that the Eurozone is currently facing have been said to be inevitable given that a monetary union without fiscal union (and properly enforced fiscal discipline) is unsustainable. EU leaders are aware however, that fiscal union cannot be discussed without

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2 “Addressing the implications of non-EEA national depositor preference regimes” CP 12/23 dated September 2012.

3 The Maastricht Treaty set out 5 criteria, known as the convergence criteria, with which EU member states are required to comply in order to adopt the euro.

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consideration of political union as experience has already shown that taxation without representation is unlikely to be acceptable. The drafters of the Maastricht Treaty (which established monetary union) were aware that the motivation for further European integration did not exist at the time. Commentators have suggested that the threat to the Eurozone could create the motivation in order to preserve the euro and perhaps the EU. Yet, some Member States (and not just the UK), appear to be backing away and the spectre of a multi-speed, or fragmented, EU is beginning to seem a possibility.

### **Banking union – a dilemma in the making**

The proposal to confer prudential supervisory oversight of all banks in the Eurozone on the European Central Bank as a response to the financial crisis represents arguably the greatest transfer of sovereignty from individual Member States to the EU that has yet occurred. Ironically, it also seems to be the instrument which best demonstrates the lack of commitment towards further EU integration amongst the 27 Member States.

Eurozone leaders announced on 29 June 2012 that, when an effective Single Supervisory Mechanism (“SSM”) was established for Eurozone banks, the Eurozone’s emergency rescue fund, the European Stability Mechanism (“ESM”), could be used to recapitalise banks directly. The Commission published its proposal for a SSM (a single EU supervisor) on 12 September 2012, thereby taking the first step towards the mutualisation of bank debt in the Eurozone. However, only fifteen days later three of the most hard-line northern creditor states, Germany, Finland and the Netherlands, issued a statement that seemed to draw back from earlier promises that the ESM’s funds would be available to banks. They stated that common supervision is a necessary, but not sufficient, precondition to direct recapitalisation. They also stated that the ESM should only take responsibility for matters arising under common supervision, that national governments remain responsible for “legacy assets” and that the ESM had to be a last resort, used only after the exhaustion of private capital and public funds; in effect, a withdrawal from a position of in principle mutual support.

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The Commission originally proposed that all banks in the Eurozone should be directly supervised by the ECB, but Germany successfully argued that only the largest banks or those that had already received financial assistance should be included: exempting the 1600 public-sector and cooperative banks in Germany. The agreement that was eventually reached on 13 December 2012 creates a SSM under the aegis of the ECB, but was significantly watered down in order to secure the agreement of all Eurozone countries, leaving the ECB with direct supervisory responsibility for only around 150 - 200 banks (albeit representing around 80% - 85% of the Eurozone's banking assets)<sup>4</sup>. Further, the system agreed will require the ECB to place heavy reliance on national regulators. It is difficult to reconcile such a framework with the idea of truly common supervision, and an ECB which is dependent on the support of national regulators who may be reluctant to cooperate or expose national issues,

may not be able to carry out effective supervision. The intervention of national interest concerns has weakened ECB powers to a point where questions as regards who is ultimately responsible and accountable for supervisory decisions may be asked with some justification. Most discouragingly, the agreement does not include two elements which are essential for the creation of a banking union and which formed two aspects of the three-pronged approach outlined by the European Council<sup>5</sup>:

- proposals for a common resolution mechanism; and
- a common deposit guarantee scheme.

At the time of writing, a proposal for a common resolution mechanism is expected in the course of 2013, but harmonisation of national schemes rather than a common deposit guarantee scheme appears the most likely outcome. The absence of the common fiscal backstop represented by these two elements of

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4 The ECB will still have prudential supervisory oversight of all banks within the SSM and the ability to intervene in relation to any bank within the system.

5 In the June 2012 report of the President of the European Council, "Towards a Genuine Economic and Monetary Union".

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### *“Banking union demonstrates the problems of a multi-speed EU”*

banking union and the reluctance of northern creditor Member States to use the ESM to recapitalise banks directly means that the original, unifying objective of banking union, the breaking of the link between sovereigns and their banks, has not been met.

Incomplete as banking union remains, more significantly the form of the SSM agreed demonstrates that the most powerful countries in the Eurozone are reluctant to move towards further integration if that means handing control of nationally significant institutions over to the EU and debt mutualisation.

Banking union also demonstrates the problems of a multi-speed EU. Mandatory for the 17 countries within the Eurozone, already the UK, Sweden and the Czech Republic have indicated that they will not participate. This fractured approach to supervision could have significant ramifications which impact on countries outside the banking union. Will, for example, the creation of the ECB as a ‘super supervisor’ change the existing relationships between national regulators? Will all national supervisors

have an equal voice?

It seems likely that the conferral of supervisory tasks on the ECB will lead to an even greater use of directly applicable regulations in EU financial services legislation, as this will enable the adoption of legislation which does not require domestic implementation and does not allow for national discretions. Given the still extensive use of national discretions in various areas of financial regulation such as bank capital requirements, this is a significant change. Such a development would appear to lead to rule-based – as opposed to judgement-based – supervision and there will be questions as to whether this model of supervision is most effective and whether one size can fit all.

#### **Politics of the Financial Transaction Tax**

14 February 2013 saw the publication of a proposal for a financial transaction tax (“FTT”) to be introduced in only 11 of the 27 EU Member States<sup>6</sup>, but which would in effect introduce what is being termed, and criticised for being, a global FTT.

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6 Germany, France, Spain, Italy, Belgium, Austria, Estonia, Slovenia, Slovakia, Portugal and Greece.

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An EU-wide FTT was initially proposed, but failed to achieve the unanimity required for fiscal measures in the EU, and was abandoned. A subset of Member States still wished to proceed, however, and it now appears likely that they will adopt a FTT through a little used procedure known as ‘enhanced cooperation’. The FTT is thus another example of the development of a multi-speed EU and, like banking union, also demonstrates the difficulties inherent in such a development. The FTT looks likely to impact all EU members, irrespective of their decision to remain outside the framework of the “enhanced cooperation”, as well as other countries around the world. In order to strengthen anti-avoidance of taxation and to meet a perceived danger of transfers of business outside the FTT-zone, a deliberate decision was made to extend the FTT to all persons who do business in or with one of the participating countries regardless of the country in which they are established – in other words, countries not party to the enhanced cooperation agreement, imposing the

FTT on those EU countries who have taken the decision not to adopt it.

### **Future developments?**

The UK has argued that closer fiscal and economic integration is a logical consequence of the European monetary union, but has made clear that it will not be part of that closer integration. In the wake of the so-called Eurozone crisis, it is beginning to seem that some countries even in the Eurozone share the reluctance of the British. At the December 2012 EU summit, at the same time as agreeing the package on banking union, EU leaders were offered the opportunity to resolve some of the flaws in the EMU and agree a three-stage roadmap to achieve a genuine EMU which would include an integrated budgetary framework (fiscal union), an integrated economic policy framework (economic union) and strengthened democratic legitimacy and accountability (political union)<sup>7</sup>. They failed to seize the opportunity but prevaricated and asked the President of the European Council to develop a more immediate (and presumably less ambitious) plan for

7 “Towards a Genuine Economic and Monetary Union” 5 December 2012.

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discussion at the June 2013 summit. While the EU's initial response to the financial crisis was to promote greater harmonisation and pan-European control, it is being forced to recognise the need for a multi-speed EU. Yet the creation of an inner core of the EU will have ramifications for those around it and it will not, as banking union and the FTT is demonstrating, always be possible to prevent the activities of the inner core from affecting those countries on the periphery.

The UK has ensured that there can be no further transfer of competence or powers to the EU during the current government and that any future transfers of power or competences from the UK to the EU would need to be agreed by the British people in a referendum<sup>8</sup>. In reinforcement of its focus on the UK national interest, it is currently conducting an audit of its relationship with the EU, known as the 'Balance of Competences' review<sup>9</sup>.

The UK embodies the current dilemma of the future direction of the EU. It advocates a multi-speed EU, elements of which it could opt in to or out of, yet it also wants to continue to influence the development of European policy. Of imperative interest to all is the preservation of the single market for all 27 Member States, but it is less clear how this will be achieved in practice. Further, developments as outlined above call into question even the Eurozone's commitment to true integration and a genuine monetary union. Without such commitment for integration, a permanent fragmentation of the EU is a real threat, but its absence threatens the valued single market and will make it difficult, if not impossible, for the Eurozone to resolve the crisis it faces.

### **Consequences of political confluence**

The most obvious consequence of the

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8 The European Union Act of 2011.

9 See "Review of the Balance of Competences between the United Kingdom and the European Union" presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty July 2012 Cm 8415. "An audit of what the EU does and how it affects the UK. It will look at where competence lies, how the EU's competences are used, and what that means for ...[the]... national interest".



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current impasse is political and regulatory uncertainty. In the UK, the British people have been offered a referendum by 2017 and the prospect of an attempted renegotiation of the UK's relationship with the EU. The uncertainty this generates could impact on the UK's influence in Brussels generally as it may be seen as an unpredictable ally, but it could also affect businesses already in the UK who want to plan their long-term operational strategies and the attractiveness of the UK as a place to set up business. If the attractiveness or accessibility of the EU internal market starts to fade, EU countries will need to look to compensate by developing trade opportunities elsewhere, logically to less benefit.

Whereas traditional trade theory advocates maintaining the open borders of the EU single market, the increasing cost associated with it needs to be considered. One effect of the financial crisis has been the increasing frequency of regulation. This in itself poses an expensive challenge for those who need to monitor its creation, lobby to influence its development

and implement it. However, major developments, such as banking union, also change and narrow regulatory priorities. As financial stability has become the key priority of the European Council, other priority matters like the new Markets in Financial Instruments legislation, which are already almost a year behind the envisaged schedule, must wait their turn and all other dossiers slide further down the agenda. This creates additional uncertainty, increases the likelihood of the regulation being out of date and out of touch with current industry practices and shortens the implementation time. Yet, new pieces of legislation are still being proposed, increasing the backlog, cost and burden on those who must remain up to date with regulatory developments.

### **Equal and opposing forces**

In this article we have seen how decisions of Member States to protect their own regulatory and political interests act as a counterweight to the push towards greater regulatory harmonisation that was demonstrated in the previous article<sup>10</sup>.

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10 Journal of Business Compliance issue 01-02/2013: The Changing Face of Financial Services Regulation under the Force of Crisis", by Alexandria Carr.

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This creates additional challenges for cross-border institutions which have to grapple with duplicative and sometimes conflicting regulation from different jurisdictions.

### **Engagement in the legislative process: A vital success factor**

As references to hard cases make for bad law, equally this financial crisis has created a regulatory burden, but not provided a long-term solution. If the current financial crisis does not provide a motivation for combining forces and further integration of the EU, it is difficult to conceive of something that will. Whilst it does not appear that the current regulatory agenda is set to decrease, the long-term objective and destination of the EU remains unclear despite the value recognised by all in the single European market. In this environment, the burden on compliance professionals in Europe to keep pace with regulatory developments is important and significant. The substantial uncertainties caused by the countervailing forces of EU politics make proactive engagement with policy makers all the more, vitally important. ■

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■ **Anthony Smith-Meyer** has recently left mainstream banking to establish a career as a specialist within Governance and Compliance matters. He is Editor-in-Chief of the new Journal of Business Compliance and is an Adjunct Professor and lecturer of International Business and Management at the European Campus of the University of Miami, Ohio. Latterly a member of the Group Executive Committee of Compliance and Control at BNP Paribas, Anthony has been extensively involved with Compliance matters since 2003, when he established the Compliance Department for Merchant Banking at Fortis Bank, and assumed responsibility for their Group Compliance function in October 2008. Anthony's career spans over three decades working for UK, North American,

Scandinavian, Benelux and French institutions in a wide range of activities including relationship driven corporate and correspondent banking, as well as product area trading room activities, structured, asset and project finance. Anthony served as Chairman of the European Securitisation Forum during 2003/04. Anthony holds the Institute of Directors Diploma in Corporate Direction and is a member of both the UK Institute of Directors and the Institut Luxembourgeois des Administrateurs; the Luxembourg Institute of Directors, where he regularly instructs on the subject of Governance and Director Responsibilities.

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■ **Andrew Buckhurst** is the Compliance and Ethics Officer for RTL Group, Europe's largest media

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■ **Mark Compton** is a partner in the Financial Services Regulatory & Enforcement practice of the London office, where he advises on UK and EU financial services legislation and enforcement. In addition, Mark counsels clients on anti-money laundering and anti-bribery legislation and systems and controls, and economic sanctions. Alongside banks and other financial services firms the clients he advises include multinational energy trading and exploration companies and engineering companies.

Prior to joining Mayer Brown in 2011, Mark worked for BP plc for over six years as the senior financial services and regulatory lawyer, covering also their commodity trading division. Mark's work also advised on matters related to physical commodity and emissions allowance trading, internal investigations, import

licenses and more. Mark also spent over five years at the FSA where he worked in the Enforcement Division on market abuse and Listing Rule breaches amongst other areas.

■ **Sonja Lohse** is presently the Head of Group Compliance in Nordea Bank. After finishing her law studies at the University of Helsinki she started her banking career. She has held numerous positions within Nordea Group and was 2001 appointed Head of Group Compliance with the assignment to build the compliance function in Nordea. Since 1999 she has been involved in many European working and expert groups appointed by the EU Commission or European FSAs and she is since 2007 the chairman of the EBF Financial Markets Committee.

■ **Pedro Montoya** was appointed Group Chief Compliance Officer by the Board of Directors of EADS in October 2008. Under the authority of the Board's Audit Committee, he designed and set up the newly created Corporate Compliance Office. Reporting to the Group CEO, he leads the EADS Ethics and Compliance Program with 140 full time employees.

Pedro graduated in his hometown from the Universidad Complutense of Madrid and obtained his Master in Laws by the Instituto de Empresa. He started his career in 1986 in Procter & Gamble and 4 years later joined the Spanish Aerospace Group CASA where he became General Counsel and Company Secretary.

Upon the formation of EADS in 2000, when he actively participated to the contribution of the Spanish assets, Pedro joined the Corporate Legal

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Department as VP Head of Contracts, Litigation and Intellectual Property. Before his appointment as Group CCO, he served three years as General Counsel EADS International.

■ **Dr. Klaus Moosmayer** is since July 2010 the Chief Counsel Compliance of Siemens AG. Together with the Chief Compliance Officer he is leading the global Compliance Organisation of Siemens and reports to the Board of Management. He is responsible for the legal Compliance management, Compliance policies, internal investigations, disciplinary sanctions, remediation and Compliance controls. Before his recent nomination he served since 2007 as the Compliance Operating Officer of Siemens and had a leading role in developing the new

Siemens Compliance Program in the course of the last years. Before entering the Siemens Legal Department 2000 he was in private practice as a lawyer. Klaus has published extensively to Compliance and white collar crime topics – including Compliance and Anti-Corruption Manuals for companies – and speaks frequently on national and international conferences on Compliance topics.

■ **Dr. Prof. Dr. jur. Mark Pieth** completed his PhD in criminal law and criminal procedure at the University of Basel. After an extensive time abroad, including the Max Planck Institute for Criminal Law and Criminology in Germany and the Cambridge Institute of Criminology in the United Kingdom, Mark practiced for a time as a barrister, before he completed his post-doctoral

thesis on sanctioning and other aspects of criminology. From 1989 to 1993, Mark was Head of Section – Economic and Organised Crime at the Swiss Federal Office of Justice (Ministry of Justice and Police), whilst also serving as Member of the Financial Action Task Force on Money Laundering (FATF) and Chair of an intergovernmental expert group charged by the United Nations with determining the extent of the illicit traffic in drugs. Mark's work at the international level has continued through to the present, including chairing the OECD Working Group on Bribery in International Business Transactions, and co-initiating the Wolfsberg AML Banking Initiative; and as a Member of the Independent Inquiry Committee into the Iraq Oil-for-Food Programme and the Integrity Advisory Board of The World Bank Group (IAB).

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**Nico Zwikker**

Nico Zwikker started his career as a lawyer at the Amsterdam bar and went on to the banking industry where he has been active for the past twenty five years.

During this period Nico has held a number of senior positions as a lawyer, and as risk and commercial manager, but for the past six years he has held the position of head of compliance at a number of international financial institutions, the last being ABN Amro following the nationalisation and integration of the Netherlands assets of Fortis and ABN Amro.

Nico's experience in compliance, reputation and regulatory risk management overarch a wide range of businesses and business risk profiles, from the retail and private banking end of the spectrum. During the course of his career, Nico has embarked on a stake holder management approach in dealing with

regulators including national regulators and a significant number of foreign regulators, and has gained experience in the fast developing regulatory banking and securities landscape.

He was one of the founding fathers of the Netherlands Association for Compliance Officers and chaired the association for a number of years. Nico teaches at the Vrije Universiteit in Amsterdam and at the Netherlands Institute for the Banking and Securities Industry.

He is a regular contributor to industry conferences and publications. ■

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