

**PKF FRANCISCLARK**

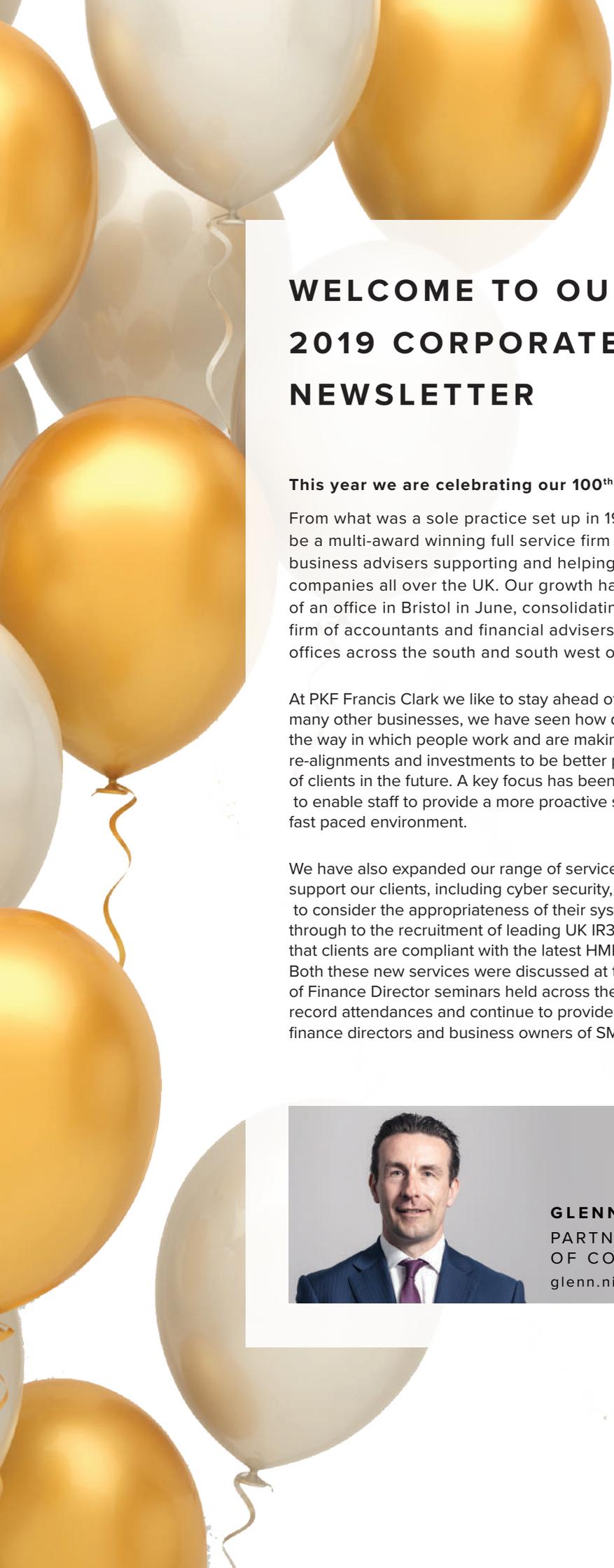
Chartered accountants & business advisers

SHARED**A**MBITION

SUMMER  
2019

# CORPORATE SERVICES

BACK TO BASICS • GOOD GOVERNANCE • MARKET UPDATES



# WELCOME TO OUR 2019 CORPORATE SERVICES NEWSLETTER

## **This year we are celebrating our 100<sup>th</sup> anniversary.**

From what was a sole practice set up in 1919, we are proud to now be a multi-award winning full service firm of accountants and business advisers supporting and helping individuals, SMEs and companies all over the UK. Our growth has continued with the opening of an office in Bristol in June, consolidating our position as the largest firm of accountants and financial advisers in the region with eight offices across the south and south west of England.

At PKF Francis Clark we like to stay ahead of the curve and, as with many other businesses, we have seen how digitalisation has changed the way in which people work and are making significant re-alignments and investments to be better placed to deliver the needs of clients in the future. A key focus has been investment in our IT systems to enable staff to provide a more proactive service in an increasingly fast paced environment.

We have also expanded our range of services to further support our clients, including cyber security, where we assist clients to consider the appropriateness of their systems against attacks, through to the recruitment of leading UK IR35 experts making sure that clients are compliant with the latest HMRC requirements. Both these new services were discussed at the recent round of Finance Director seminars held across the region - all of which had record attendances and continue to provide the latest information for finance directors and business owners of SME companies.



**GLENN NICOL**  
PARTNER AND HEAD  
OF CORPORATE SERVICES  
[glenn.nicol@pkf-francisclark.co.uk](mailto:glenn.nicol@pkf-francisclark.co.uk)



## WHEN IS A SHARE NOT AN ORDINARY SHARE?

The First-tier Tax Tribunal has recently held that cumulative preference shares can constitute ordinary share capital for the purposes of entrepreneurs' relief. This is contrary to HMRC's opinion, expressed in recently issued guidance. Broadly, the definition in the legislation is that ordinary share capital means all of a company's issued share capital (other than fixed rate shares). In this case HMRC argued that, because the rate of the dividend remained fixed (at 10%), the shares could not be ordinary share capital.

The Tribunal agreed with the taxpayer's argument that, in determining whether a right to a dividend is at a fixed rate, it is necessary to have regard to two elements: the percentage rate (which is fixed) and the amount to which it is applied (which in this case was variable) as the company's articles allowed for compounding of unpaid dividends in years when there were insufficient reserves. This meant that elements of the payment were not fixed as they could include unpaid amounts from previous years. If there

were insufficient reserves to pay the dividends in respect of those shares in a particular year, payment was deferred to a subsequent year. Therefore, the rate at which the dividend would be paid, 10%, would be calculated on an increased amount which was the aggregate of the subscription price and the aggregate unpaid dividends.

Testing this gave logical results in a variety of situations, the Tribunal concluded that the preference shares constituted ordinary share capital.

It is notable that this decision is contrary to the view expressed in HMRC's recent guidance. It is not yet known whether HMRC will choose to appeal - it has 56 days from the date of the decision to do so, should it wish to.

Practically, and in addition to the October 2018 budget changes, it further increases the need to review existing share ownership structures to understand the impact of the recent developments on the qualification for entrepreneurs' relief.



**ADAM KEFFORD**  
TAX DIRECTOR

[adam.kefford@pkf-francisclark.co.uk](mailto:adam.kefford@pkf-francisclark.co.uk)

# NEW CHALLENGES IN NARRATIVE REPORTING

2019 SEES THE INTRODUCTION OF NOT ONE, BUT TWO NEW REGULATIONS AFFECTING THE CONTENT OF NARRATIVE REPORTS IN THE ANNUAL ACCOUNTS OF LARGE COMPANIES. THOSE AFFECTED WILL NEED TO CONSIDER HOW THEY GO ABOUT COLLECTING THE RELEVANT INFORMATION AND THE BEST WAY TO PRESENT IT.

Large companies are those meeting two of the following three thresholds:

- Turnover exceeding £36m
- Total assets exceeding £18m
- More than 250 employees (average number on a headcount basis)
- The thresholds are applied on a rolling two year basis

## S172 STATEMENTS

For periods beginning on or after 1 January 2019, large companies are required to include a statement in their strategic reports explaining how the directors have fulfilled their duty under s172 Companies Act 2006 to promote the success of the company for the benefit of its members. s172 requires directors to take into account six factors:

- The likely consequences of any decision in the long term
- The interests of the company's employees
- The need to foster business relationships with suppliers, customers and others
- The impact of the company's operations on the community and the environment
- The desirability of maintaining a reputation for high standards of business conduct
- The need to act fairly as between members.

The s172 statement must explain how key decisions made by the directors during the year have taken into account these factors, so far as they are relevant, which does not necessarily mean that all six factors will be referred to every year.

The statement can either be presented as a separately identifiable element of the strategic report or by means of cross reference to other aspects of the report.

Note that all large companies within a group must prepare their own individual statement: there is no exemption by reference to a group statement.

Affected companies must also publish their s172 statement on their website as soon as practicable after the accounts are approved.

## CARBON ENERGY REPORTING REGULATIONS

The Carbon Energy Reporting Regulations apply to accounting periods beginning on or after 1 April 2019. They require affected companies to present a Carbon Energy Report within the directors' report. Large LLPs must also make the report as a new, standalone narrative document within their annual accounts. The new report must give information about UK onsite and transport energy usage (primarily gas, electricity and fuel) in kilowatt hours and as carbon emissions (carbon dioxide per tonne). In addition, companies must report at least one 'intensity ratio' such as energy usage per staff member or per £ of turnover, and give details of energy efficiency measures taken by the business during the year.

While companies may find it relatively easy to collate information for onsite energy usage, transport may prove more challenging, particularly as it is only the business element of any fuel cost that is reportable, not personal mileage.

Fortunately, comparative figures are not required in the first year, but companies will need to consider how best to obtain the relevant data from their systems.

Note that groups will only have to report information in respect of large subsidiaries and the parent company, although all subsidiaries may be included if the data is available.

Public reporting will allow stakeholders and the general public to assess the greenhouse gas emissions of large businesses and their energy efficiency measures and draw comparisons between them.



**STEPHANIE HENSHAW**  
PARTNER AND HEAD OF AUDIT & ASSURANCE  
[stephanie.henshaw@pkf-francisclark.co.uk](mailto:stephanie.henshaw@pkf-francisclark.co.uk)





## ARE YOUR PERSONAL SERVICE COMPANIES 'MANAGED'?



REBECCA EXPLAINS WHY HMRC'S WIN IN THE FIRST CASE CONCERNING THE MANAGED SERVICE COMPANY (MSC) LEGISLATION, IS A WORRYING DEVELOPMENT.

**REBECCA SEELEY HARRIS**  
TAX DIRECTOR

[rebecca.seeleyharris@pkf-francisclark.co.uk](mailto:rebecca.seeleyharris@pkf-francisclark.co.uk)

### WHAT IS THE MSC LAW?

The MSC legislation was first enacted in 2007 but, a more accurate title for this law now would be: the managed 'personal service company' legislation.

Originally, the legislation was designed to close down the composite managed service companies - which it did, virtually overnight. Now HMRC is about to realise the full potential of the MSC rules by exercising the transfer of debt provisions which, as the name suggests, transfers the tax debt to a 'another', if it cannot be recovered from the individual.

The threat of the MSC legislation is therefore, two-fold. Firstly, it may apply to existing corporate structures and secondly, if HMRC cannot recover from the MSC, they can transfer the debt to another in the chain.

This use of the transfer of debt rules is only possible because HMRC has won the first case brought under the MSC legislations at the Court of Appeal *Christianuyi & Others v. HMRC* [2019] EWCA Civ 474.

### FACTS OF THE CASE

The appellants in *Christianuyi & Others v. HMRC* are all companies that provide services of a particular individual, and in each case that person is the sole director and majority shareholder of the company. The appellants contract with the end client who want to engage the services of the individual. So far, those companies are looking like personal service companies but then, enter Costelloe.

Costelloe Business Services Ltd. set up all the appellant companies and provided additional services. The issue in front of the court was whether the appellants were MSCs and, critically, whether Costelloe was a managed service company provider. If they were MSCs, there is a significant effect on the tax treatment of the payments that are made by the appellant companies to the individuals who own them.

### WHO PAYS THE TAX?

The objective of the legislation is to tax the MSC as if they were a deemed employee. If HMRC cannot recover from the individual, it can transfer the debt to a third party and that could be the agency or the client.

Unlike IR35, this MSC legislation does not use the employment status test as it does not require the distinction between employed or self-employed. HMRC only needs to prove that there is a managed service company and, in addition, a MSC provider who is 'involved'.

### EARLIER DECISIONS

The upper tribunal in *Christianuyi* concluded that there was a perfectly straightforward, two stage test, for determining whether a company is or is not an MSC provider:

- Does the putative MSC provider promote or facilitate the use of a company?
- If so, does the company provide the services of individuals?

That perfectly straightforward test demonstrates how wide the legislation was drafted, as the Court of Appeal accepted it and HMRC have already started sending out compliance letters on the basis of their win at the Court of Appeal.



## VAT

HMRC expect a finance director's sphere of knowledge to be sufficient to cover the indirect taxes. Even if there is a delegation of duties there is still an expectation that procedures are in place to identify and address material errors before returns are submitted.

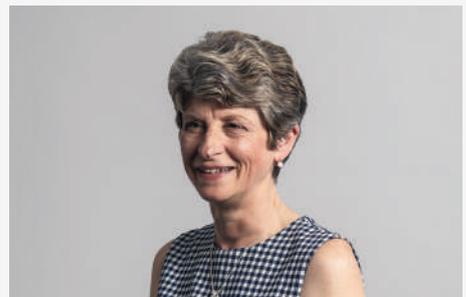
After years of attending VAT visits it is clear that HMRC have a predictive script and target specific easy wins. By being aware of these easy targets and putting procedures in place to ensure you have treated the items correctly is paramount to an uneventful visit. These common areas include:

- Bad debt relief - meeting the six month conditions and making the adjustments when necessary. In addition, HMRC also check that procedures are in place to repay VAT to HMRC as appropriate where suppliers have not been paid within six months.
- Motor expenses - including adjustments for blocked goods, private use and fuel costs.
- Entertaining - being aware of the quirky differences between staff, customers and a mixture of both

- Intercompany adjustments - management charges, barter, contra and journals. All potentially have an impact when the right tax is not paid at the right time.
- Income with no VAT - there are some instances of not getting the correct liability but most zero ratings rely on conditions being met such as requiring certificates or proof of movement of goods within certain time frames.
- Valid evidence to support recovery such as valid VAT invoices and C79 certificates. Many issues are caused by pro forma invoices and incorrectly addressed invoices. A review of large or unusual invoices should be carried out as a matter of course.

HMRC have published many public notices covering the above and often point to them when discovering an error. It is recommended that where these do not cover the exact circumstance that businesses seek other advice. Whether such advice is taken from HMRC or external advisers it is key to document that advice in order to prove that reasonable care is being taken.

So far Brexit has created a lot of uncertainty. HMRC have tried to implement (albeit very last minute) some measures to help the initial pain expected from a no deal. The introduction of transitional simplified procedures (TSP), postponed VAT accounting, easy access to a deferment account and no deal tariff changes are all welcome. Potentially impacted businesses should be prudent and register for these services and understand the impact the tariff changes will have so that they are in the best position to navigate the uncharted terrain.



**JULIE TOWERS**

VAT PARTNER

[julie.towers@pkf-francisclark.co.uk](mailto:julie.towers@pkf-francisclark.co.uk)

# ESCALATE DISPUTE RESOLUTION

A SMARTER WAY TO RESOLVE COMMERCIAL DISPUTES

Pursuing a commercial dispute tends to be a costly, lengthy and risky undertaking. Given that the average litigation case for a small or medium-sized business is around 18 months, it is not uncommon for costs to spiral to the level of the damages that you are claiming. Even if you can find a lawyer to act for you on a 'no win no fee' basis, you will still have to pay up front for disbursements such as court fees. And of course, you could be liable for the defendant's costs as well as your own if you lose the case. It is hardly surprising, that in excess of £40 billion is currently written off because businesses have not had a cost-effective solution to resolve their commercial disputes.

Escalate was created by the professional services market to provide a smarter way to resolve SME disputes. Our Escalate dispute resolution service takes a completely fresh approach. We have created a new type of service that prioritises your cash flow by focusing on a quick settlement, removing upfront costs and minimising risks. By looking at the process from your perspective, we are transforming how small and medium-sized businesses manage disputes. Why Escalate?

- No financial risk - you do not pay out unless we reach a successful settlement
- No initial outlay - we pay for all of the up-front costs
- Rapid results - we aim to get your money back in just three months; if we cannot settle quickly, we have the financial backing to support you all the way to a High Court resolution
- A fixed fee basis - complete transparency from the start
- No restrictions on the types of cases we tackle - bad debt, contractual, negligence, IP infringement etc.
- Not just current or future cases - we can go back to disputes that are up to three years old
- Best suited for claims of £30,000 or more.

Escalate looks at each of the steps of the traditional dispute resolution process from the claimants perspective.

We begin negotiating on your behalf as soon as you engage us, using experienced negotiators to encourage the defendant to settle quickly in your favour without the need for litigation. We allow up to three months for this negotiation.

If the defendant is unwilling to settle in this timeframe, we move quickly to litigation, but always with a view to achieving a good settlement quickly rather than long proceedings. We will take care of this process for you, paying the up-front fees and associated costs all the way up to a High Court resolution.

FOR MORE INFORMATION VISIT OUR WEBSITE OR TALK TO OUR ESCALATE TEAM:

**STEPHEN HOBSON**  
BUSINESS RECOVERY PARTNER  
07979 507954  
stephen.hobson@pkf-francisclark.co.uk



**LUCINDA COLEMAN**  
BUSINESS RECOVERY PARTNER  
07730 096776  
lucinda.coleman@pkf-francisclark.co.uk



0800 832 1875  
[francisclarkinsolvency.co.uk/escalate-dispute-resolution/](https://francisclarkinsolvency.co.uk/escalate-dispute-resolution/)



# CORPORATE FINANCE MARKET UPDATE

AT THE DATE OF WRITING THIS ARTICLE THE RESULTS OF THE 2019 EUROPEAN ELECTIONS HAVE JUST BEEN ANNOUNCED - WHERE, UNSURPRISINGLY, THE SUCCESS OF THE BREXIT PARTY AND LIBERAL DEMOCRATS REFLECTED BOTH THE POLITICAL FRUSTRATION AND DIVISION THAT REMAINS AMONGST THE UK ELECTORATE.

Many financial commentators had discounted these elections from their H1/2019 predictions earlier in the year, partly in expectation, but perhaps more in hope, that the UK would have left the EU by now. On reflection, the ongoing and now extended political uncertainty has undoubtedly impacted transaction volumes across both the UK and south west.

From the perspective of the UK as whole Q1/19 deal volumes recorded both their lowest quarterly volume and value statistics in the last four years.



The Q1/19 UK reduction was reflected in the south west overall despite that traditionally the South West region has a proven track record of economic and transactional resilience even during a downturn. However, in studying the date in more detail, Devon and Cornwall supported this assertion and did buck the trend compared to the wider south west - with transaction numbers broadly consistent year on year in Devon and Cornwall compared to a 5% fall across the south west over the same period.



Aside from the political backdrop, the availability of funding across both equity and debt markets, combined with the UK Government's capital taxation system remain conducive factors in driving M&A activity. In over 20 years of working in corporate finance, I cannot recall funding sources having been so numerous and varied.

On the equity side the rise of the mid-market houses seeking larger investments, and changes in the VCT rules, has seen a number of the VCT houses now successfully raising their own institutional funds to occupy the sub £15m investment space.

Secondary and tertiary debt lenders (the so called alternative lenders) are now beginning to get a foothold in both the transactional and working capital markets, and provide credible alternatives to the major high street banks. As for the high street banks, we have seen a degree of changing appetite and focus, many of which will have an impact on our clients in the south west and will be discussed at our forthcoming seminars for FDs including:

- Working capital facilities - increased focus on the management of cash flow and a trend away from the traditional

overdraft towards the use of structured facilities such as confidential invoice discounting, trade and stocking finance

- Commercial property - variability in appetite reflected both in terms of LTV percentages, valuation approaches and owner occupied properties compared to those held for investment purposes
- Historic covenant suites and definitions - move away from a standard suite towards bespoke and lighter covenants testing regime.



On a final note regarding trends; the south west economy benefits from a wide range of businesses, many of whom are family owned and run. The desire to plan for future succession, retain a degree of family ownership and motivate key management can sometimes be a difficult balance to strike. An increasingly acceptable compromise often manifests itself in the form of a Family and Management Buy-Out, or FAMBO. We are seeing strong interest from both equity and debt providers who are attracted to the combination of retained family experience and a motivated management team together with sensible funding structures. To unlock these transactions, our experience in balancing the needs of the family together with and with our extensive funding relationships means we can

structure a transaction that retains wealth within a family, provides a strong succession plan, incentivises management and utilises the currently favourable capital gains tax regime.

In summary, the view from the PKF Francis Clark corporate finance team is one of cautious optimism.

Whilst there are undoubtedly a number of uncertainties in the economy, the UK and more specifically the south and south west regions, have a proven track record of being resilient economic regions, with many well run and profitable businesses. The region continues to be an attractive location to do business as demonstrated by both significant overseas investments and acquisitions by incumbent south west businesses.

**PAUL CROCKER**  
CORPORATE FINANCE PARTNER  
[paul.crocker@pkf-francisclark.co.uk](mailto:paul.crocker@pkf-francisclark.co.uk)





## GOOD GOVERNANCE IN CYBER SECURITY

Good governance for cyber security means having a plan, understanding the risks and owning them. Digital technology is now omnipresent and is not set to go away any time soon, therefore we must find ways to manage it and whatever risks it may present us with. Over the last few years at PKF Francis Clark, we have seen an increasing number of our clients expressing a desire to properly tackle the issue of cyber and seeking advice on how to develop a strategy to do so.

Having a cyber security strategy is key as it demonstrates a knowledge of the risks and threats that cyber-attacks could pose to your organisation. A top-down approach helps to generate a plan of actions designed to improve the security and resilience of your services, your digital infrastructure, and improve understanding of the technical elements of cyber security at a board/director level. Applying a comprehensive cyber security strategy to your organisation can also facilitate good processes such as regular risk assessments, assignment of responsibilities and infrastructure management. Due to cyber being ever changing in nature, good governance allows for continual review of procedures making for a more adaptable and

agile organisation which can readily face the challenges presented by the modern, technological world in which information assurance and regulation features prominently.

The rise of regulation for data protection and therefore cyber security, whilst it can seem onerous, is beneficial to both your own organisation and the organisations you choose to work with. Certification can be obtained to prove that you are responsible with the data you are in control of or are processing. By taking the necessary steps to protect yourself, such as becoming certified with Cyber Essentials, you are signalling to stakeholders and other organisations alike that managing the risks properly is something that you are willing to do in order to maintain safe, secure, business to business relationships.

This is, naturally, something you would also wish to see in other organisations that you work with as you could be sharing potentially sensitive information with them and would want assurance from them to the same standards to which you hold yourself. By requiring that such standards are met by your business partners you can help to create a secure chain that is trusted by all stakeholders and may also be positive for your public image.

WITH INCREASING GENERAL AWARENESS OF THE REGULATORY IMPACT POOR PLANNING FOR CYBER COULD HAVE, PKF FRANCIS CLARK IS WORKING WITH MANY OF OUR CLIENTS TO HELP IMPROVE THEIR CYBER SECURITY THROUGH AN AUDIT LIKE APPROACH INCLUDING ASSESSMENTS, TRAINING AND ACCREDITATION. IF YOU FEEL THAT YOUR ORGANISATION COULD BENEFIT FROM EXPERT KNOWLEDGE OR YOU WOULD LIKE TO FIND OUT MORE PLEASE CONTACT US AT [CYBER@PKF-FRANCISCLARK.CO.UK](mailto:CYBER@PKF-FRANCISCLARK.CO.UK).



**PETER LANNON**  
CYBER PROTECTION ADVISER  
[peter.lannon@pkf-francisclark.co.uk](mailto:peter.lannon@pkf-francisclark.co.uk)



Ciaran Martin, CEO of the National Cyber Security Centre (the Governments cyber centre), speaking on 12 September 2018 at the CBI Cyber Conference included the following quotes:

"My message today is aimed at board level and general corporate leadership, which is key to managing this crucial risk. When we look at some of the advice given around the world on how to manage corporate cyber security risk, it's basically about governance. Good governance is necessary."

# DATES FOR YOUR DIARY 2019

## FD SEMINAR EVENTS

**TUE 5 NOVEMBER**

**BOURNEMOUTH**

**AFC BOURNEMOUTH**

VITALITY STADIUM  
BOURNEMOUTH  
BH7 7AF

**WED 6 NOVEMBER**

**TAUNTON**

**SOMERSET CRICKET CLUB**

TAUNTON  
TA1 1JT

**THU 7 NOVEMBER**

**BODMIN**

**LANHYDROCK HOTEL &  
GOLF CLUB**

BODMIN  
PL30 5AQ

**TUE 19 NOVEMBER**

**BRISTOL**

**ASHTON GATE STADIUM**

ASHTON ROAD  
BRISTOL  
BS3 2EJ

**WED 20 NOVEMBER**

**PLYMOUTH**

**BORINGDON PARK  
GOLF CLUB**

PLYMPTON  
PLYMOUTH  
PL7 4QG

**THU 21 NOVEMBER**

**EXETER**

**EXETER RACECOURSE**

EXETER  
EX6 7XS



# EVERYONE LIKES THE VIEW FROM THE TOP

We're proud to sponsor the Top 150 list and we're even prouder to see plenty of our clients in there. We share the ambitions that each of them have for their customers, their people and the south west, and we've been helping turn those ambitions into reality every day for the last century.

Each of our clients know that getting to the top is tough. They know what it takes, but they aren't about to stop now. And they know we're behind them all the way.

Talk to us if you're looking for a partner to share the climb.

[pkf-francisclark.co.uk](http://pkf-francisclark.co.uk)



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0117 403 9800	01392 667000	01752 301010	01202 663600	01722 337661	01823 275925	01803 320100	01872 276477

Please visit our website for your local office expert  
[pkf-francisclark.co.uk](http://pkf-francisclark.co.uk)

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