Risk, Resilience
and Reputation

# Focus on Funds | Risk, Resilience and Reputation

## Don’t be the weakest link | Managing data and cyber risk

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# Presenting today

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# A few real-life examples. This could happen to you too…

Your data get exfiltrated & **cryptolocked** with request to pay ransom in virtual currency

**APT**: State-sponsored hack (originating from rogue state) + exfiltration of intellectual property

Hack into mailbox of senior management

**Purchase price for recent acquisition** was wired into fraudulent bank account

Hack into mailbox of senior management

**strategic information** about confidential **M&A transaction** potentially exposed

Threat by **disgruntled temporary worker** whose contract got not prolonged

IT-consultant published scripts on **Github** (public directory) containing **security credentials** which have been used by a Chinese IP address to intrude into your IT environment

# Tips & tricks based on our real-life experience

**Call** your insurer's or your broker's **hotline** asap (even if unclear whether incident is covered by policy)

Be mindful of **confidentiality**: only disclose the incident to those that have a strict need to know

Consider **legal privilege**: when involving external forensic experts you may want to contract them through CMS (external counsel) to vest legal privilege in the findings of the experts

**Hackers may listen in:**
use Signal, Threema or Whatsapp for fast and confidential communication between all the various stakeholders (internal IT; internal CISO; external forensics; external counsel; other stakeholders)

Make sure you have internal & external **communications ready** in case you need to communicate (pro-actively or re-actively) about the incident + make sure that your lawyers have approved the comms before they go out

In ransomware attacks: check for **IP address(es)** of **staging server(s)**. Hosting provider may be willing to take exfiltrated data off-line

# Tips & tricks based on our real-life experience

Set up **daily status update calls** with all involved stakeholders (internal IT/CISO; external forensics; in-house & external counsel; insurance broker; etc.)

**Fix** the common **weak spots**:

- Many cyberattacks could be avoided if multifactor-authentication was on
- Do not postpone patching of known vulnerabilities
- Your BoD and chairman may be using email clients that are not sufficiently secured
- Make sure sufficient logs are available

**Document** the incident
+ actions undertaken to remediate and improve

**Post-mortem follow-up**:
Never waste a good crisis. Use incident to define and implement improvements to your systems/processes

# Reporting obligations

You may have to **notify** the incident to:

The **Data Protection Authority** if personal data (e.g. of your workers) have been exposed.

- Two-step notifications in case the findings of the investigation are still unclear, but potentially causing serious risks to personal data
- Be mindful of international dimension: GDPR's 1-stop-shop may allow you to notify only one DPA (lead DPA)

**Financial markets supervisory authorities**

Affected data subjects

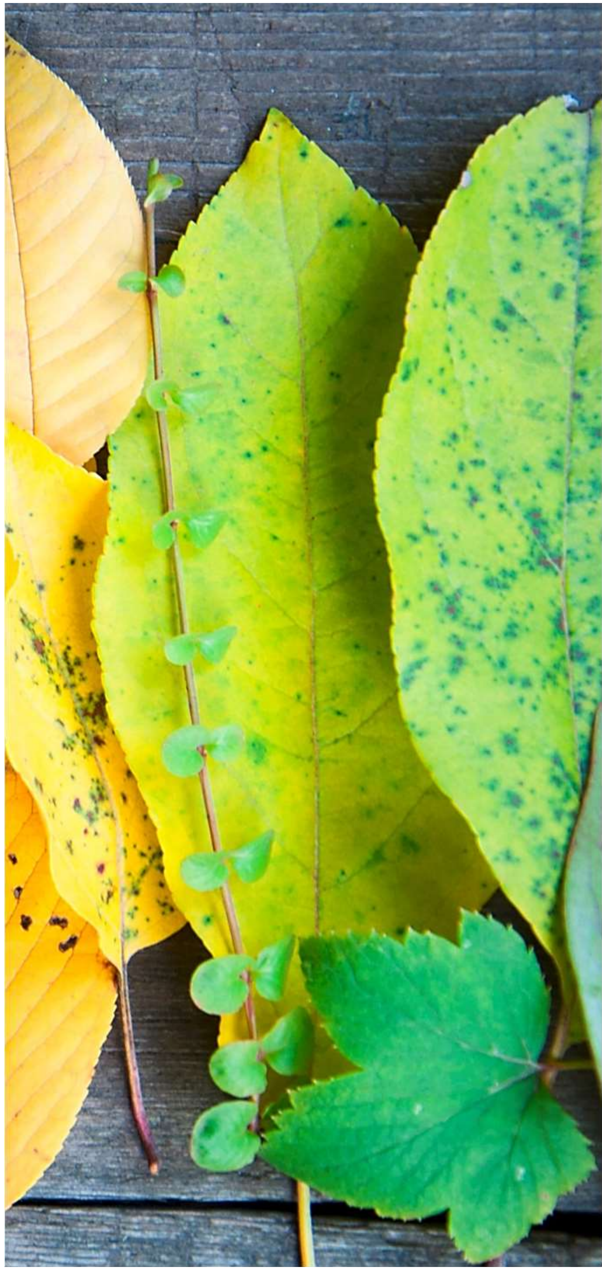
**Your customers:**
check your contracts to see whether they require you to disclose security incidents

Is it worthwhile notifying the **police**?

**Other governmental authorities**
(e.g. if you (or your customers) are active in regulated industries (e.g. financial services industry; defence industry; telecommunications; critical infrastructure; etc.))

# The cyber insurance market

- Growth of cyber insurance take up 20 – 25% per annum
- Still significant “under insurance” worldwide and in the UK
- Cost of cyber insurance rising and market hardening
- Ransomware driving rate increases and market changing to respond
- Insurance part of your holistic risk management programme



# Cyber policy: First party coverage | areas typically covered

Damage caused to the Insured

## Event Management

Legal & IT breach response services, Data restoration costs, restoration of computer systems (software and hardware); PR services; notification costs; credit/ID monitoring offered to data subjects

## Business Interruption

- Reduction in operating profit caused by cyber incident, costs incurred in mitigation of loss
- Set timeframe (e.g. 3 months)
- Consider untargeted v targeted attacks
- Consider supply chain issues

## Cyber Extortion

- Costs of ransom negotiator
- Payment of ransom
- Sanctions concerns
- War and terrorism exclusion

## Fines and penalties

- PCI Fines
- Cover unless uninsurable at law
- FCA fines = uninsurable
- DPA fines?

# Third Party Losses

## Damage caused to the Insured’s clients and others

### Defence costs

- Third party claims or regulatory investigations for claims arising out of data breach of security failure
- Typically require Insurers’ prior agreement
- Reimbursement of “reasonable and necessary” costs

### Damages

- Damages
- Claimants costs
- Settlements reached with third parties (with Insurers’ consent)

# Common exclusions

## 01 Uninsurable loss

e.g. FCA fines

## 02 Conduct

Reckless or negligent acts by a director/senior management

## 03 Betterment

Upgrades to Insured’s systems to improve IT infrastructure rather than response to ongoing incident

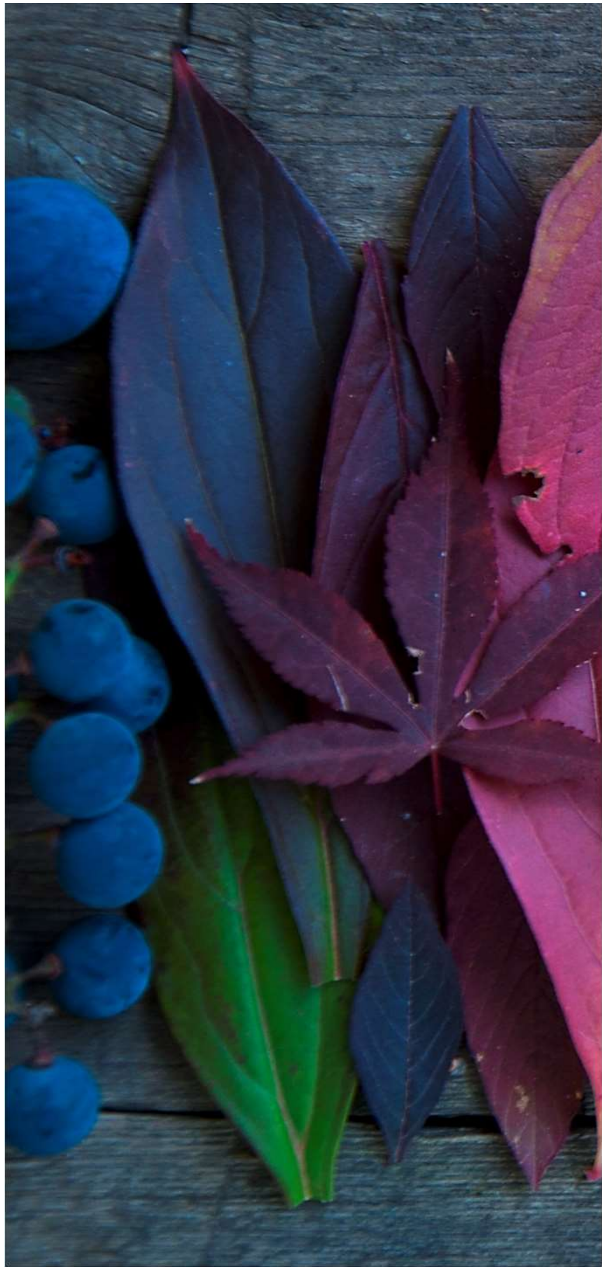
## 04 Property damage/ Infrastructure

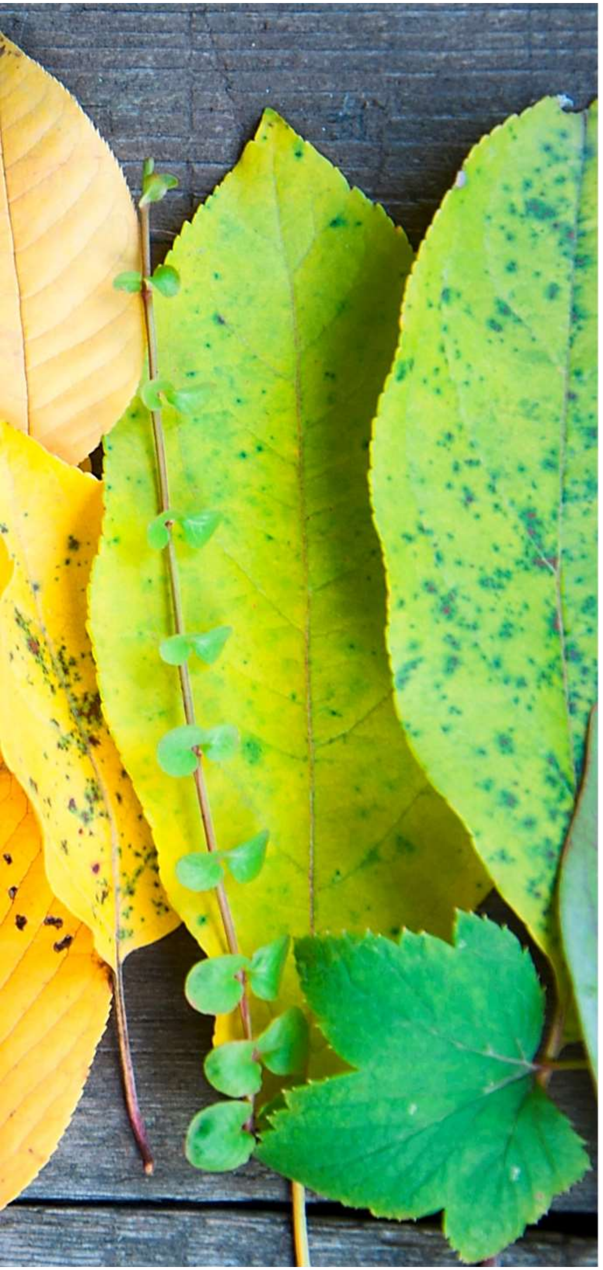
## 05 War & terrorism

- 4 LMA model wordings (November 2021)
- Burden on Insurer to prove it applies
- War does not have to be declared
- Attribution to a state

# Commercial claims which you may face following a cyber attack

- Compensation for direct financial losses suffered by clients or customers
- Damages for breach of contract; failure to provide services
- Claims by data subjects whose personal data is compromised by the cyber attack
- Class actions/group litigation

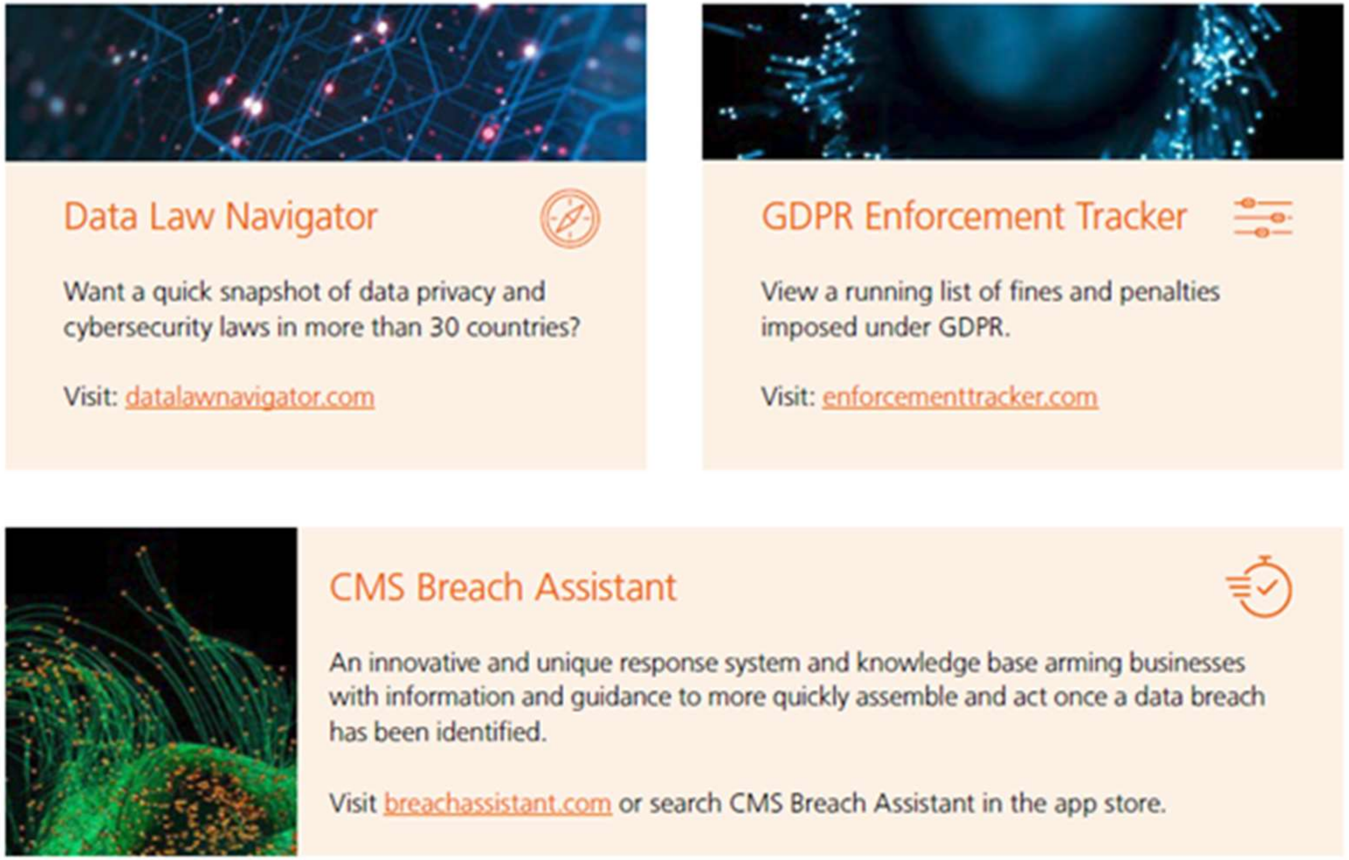




# Claims against suppliers

- IT consultants/MSPs; admin services; banking services
- Contractual claims - security levels/updating/testing
- Reasonable care and skill – good industry practice
- What can be recovered – foreseeability and causation
- Limitations and exclusions of liability
- Minimising risk – procurement; testing; limitations; insurance

# Helpful resources



## Data Law Navigator

Want a quick snapshot of data privacy and cybersecurity laws in more than 30 countries?

Visit: datalawnavigator.com

## GDPR Enforcement Tracker

View a running list of fines and penalties imposed under GDPR.

Visit: enforcementtracker.com

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# Thank you for joining us