‘Fanks’ for nothing?

A tale of Thomas Cook’s recent demise, in numbers:

- 150,000 holidaymakers repatriated to the UK by the Civil Aviation Authority
- 9,000 jobs lost
- 0 – the amount of Peter Fankhauser’s cash bonuses caught by clawback provisions.

Yes, that last figure IS correct. Wading into the detail of Thomas Cook’s annual reports for the financial years 2017 and 2018 reveals that only a two year clawback period was applicable to cash bonuses from their date of payment.

Peter Fankhauser, CEO of Thomas Cook from 26 November 2014 to 23 September 2019 (the date that the UK’s oldest travel company fell into administration), received zero cash bonus in December 2017 and a cash bonus of £562,683 in December 2016 (net of a mandatory share deferral at 33%, according to our calculations). The Board’s overall bonus entitlement was disclosed in the company’s annual report and accounts on 23 November 2017. [https://www.thomascookgroup.com/investors/insight_external_assest/Thomas_Cook_AR_2018_web.pdf]

Whilst the company, in their own words was indeed ‘an early adopter of malus and clawback on bonus’, the two year clawback period applicable from the date of bonus payment means that technically, neither the (now defunct) Remuneration Committee nor presumably the Liquidator is now legally entitled to claw back that December 2016 cash bonus from the former CEO. Whilst the triggers for clawback make for interesting reading, as they cover:

- *‘a material adverse misstatement or misrepresentation of the Company’s or any Group member’s financial statements; and/or*
- *the participant or their team having engaged in gross misconduct or in conduct which resulted in significant losses, as determined by the Committee; and/or*
- *the Company having suffered serious reputational damage or financial downturn, as determined by the Committee, as a result of any action (or in the case of awards under the new PSP or SSIP, any action or omission) taken by the participant, or their team’*

they are irrelevant as regards the cash bonus due to the timing of this payment and the applicable clawback period.

The element of cash bonus deferred into shares is now worthless, and awards made under the company’s LTIP on 11 December 2015 lapsed in December 2018, as the EPS and TSR performance conditions were not met.

The awards made to the CEO and CFO under the company’s Performance Share Plan on 1 December 2017 had not reached the end of their performance measurement period at the time that the company went under in September this year.

According to the company’s shareholding requirements, ‘…Executive Directors are required to build and maintain a shareholding in the Company to a value of at least 200 per cent of base salary within a five-year period commencing on appointment as an Executive Director’. As at Sunday 30 September 2018, Peter Fankhauser’s beneficial shareholding in the company stood at 2,332,872 shares. With the closing price at 57.9p his own shareholding was worth £1.35m, more or less the value stipulated by the shareholding requirement.

Fankhauser had worked for the company for 18 years at the time of its failure. He took the helm as CEO in November 2014 from Harriet Green OBE, after her short but arguably effective two-year tenure during which time the share price recovered from 14p to 130p. Green told MPs at October 2019's BEIS Select Committee hearing that when she joined the tour operator in 2012 there had been a number of profit warnings and the company was dealing with what she termed a "wall of debt". She contended that when she was asked to leave the company – apparently due to disagreements with the rest of the Board on the scale and pace of change required - it was just 28 months into a 6 year turnaround plan which had included refinancing and reducing the debt, selling off non-core parts of the business and building a digital offering.

In August 2019, labouring under a debt pile of £1.7bn, the company announced details of its plan to recapitalise, including a £450m injection of capital from Chinese travel company Fosun in return for at least 75% of the equity of the company's tour operator and 25% of the airline, and an investment of £450m from the group's banks and noteholders. The deal eventually foundered in September, triggering the company's collapse.
[https://www.thomascookgroup.com/investors/insight_external_assest/TCG-UpdateonProposedRecapitalisationPlan-28August2019.pdf]

Whilst with the benefit of hindsight the malus & clawback provisions do look ineffective, the seeds of the company's demise were sown over years not months, and the combination of a hot UK summer and reduced demand, an outdated business model, the pace of transformation, an unmanageable debt pile, and exposure to the UK's ailing High Street were finally too much for it to bear.

So what lessons should be learned? The BEIS Committee's report this week [HYPERLINK] makes the following observations and recommendations:

- Legislation to replace the FRC with the new Audit, Reporting & Governance Authority ('ARGA') has still not been introduced (interrupted firstly by the Government's contentious pro-rogation of Parliament and now the General Election);
- Bonus criteria need to be more transparent (although Thomas Cook did not pay cash bonuses to executives from 2017 onwards – and is MORE disclosure the answer?);
- Future performance bonus arrangements should be required to include 'suitable clawback provisions for a suitable period' (so is two years – as per Thomas Cook's cash bonus payments - too short?); and
- That the Government should evaluate the current insolvency process and that a binding commitment should be sought from lenders to enable employees who've lost their jobs to benefit from a loan payment holiday or a mortgage payment holiday.

The last point is probably the most important – when companies fail, employees are the most vulnerable of stakeholders and in many ways the least protected. Thomas Cook employees who were effectively made redundant by the company's collapse are now required to claim for their redundancy pay and any other pay arrears via the Insolvency Service. Their payments are capped at £525 per week and anything owed over that amount is unlikely to be recoverable, as they will join the lengthy list of unsecured creditors.

Employees who participated in the company's Save As You Earn scheme will have their savings returned to them, as these are held independently of company funds by a savings carrier, and covered by the Financial Services Compensation Scheme (their options will lapse). Those who held shares in the Share Incentive Plan, however, will have suffered the same fate as other shareholders as the shares are now worthless.

In the current culture of blame-shifting, one of the more unfashionable views is that the success or failure of companies is never down to one individual, however influential or inspiring – or inadequate - they might be. Executive pay has been scrutinised – fetishized, even – for many years in the UK and what has changed? Still we see high-profile company failures. This focus on the pay of the top handful of individuals in our largest companies has been at the expense of attention to stagnating levels of employee pay for millions of people further down the corporate hierarchy. Politicians of all stripes would rather have executive fat-cats take the heat of the media and public's wrath, than suffer scrutiny of their own woeful record on improving pay and conditions for rank and file employees and workers up and down the country.

It's a sorry end to the company whose namesake founder effectively invented mass tourism in 1841, ultimately enabling millions of people to make the most of their precious time off work and to travel the world.

Will the right lessons be learned?