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it's our business

newspad of the Employee Share Ownership Centre

Esops in tune with UN Development Goals, says chairman

Employee share ownership ticks one of the key boxes in the UN's Sustainable Development Goals 2030– that of reducing income inequality at both international and national level, Centre chairman **Malcolm Hurlston** told the **third British Isles share plans symposium** last month. "*What better solution than the employee financial participation which enlightened companies already practise and are ready to deepen?*" he asked delegates.

"The Centre is working closely with its European allies in ProEFP to create a structure within which our members – who are already ahead of the game – may help companies who are looking both to do good and to please demanding investors," Mr Hurlston told a packed auditorium at the event hosted by legal group member **Travers Smith.**

"*The UN's Goal Ten is about tackling the widening of income disparities – well, everything we do at the Centre is about providing additional money for ordinary people, but of course we have much further to go down that road. I doubt whether more than one third of the UK's employees concerned are being contacted about taking part in share schemes*."

Mr Hurlston said that the Centre was working on a model statement about all-employee share ownership for companies to add to their annual and other reports. This would be one way of getting employees to talk and think more about Eso: "Without pontificating, it is fair to say that increasing numbers of economists, politicians and social scientists view employee share ownership and employee ownership as a ***third way*** for post-industrial western economies," he added.

However, setting up and operating all-employee share plans was hardly the proverbial vicar's tea party. Share plan sponsors had to be super aware of the importance of two-way plan communications (*many now paperless*), the ever-changing and very demanding regulatory environment; how some employee participants fitted with difficulty into strict share plan rules… the problem of maintaining employee interest and getting them to understand their commitment to and involvement in, their company's success, through the medium of all-employee share ownership.

"*When Esops are combined with leadership from the top, this is often a winning formula. Employees are much more aware these days of corporate excess and of social injustice, as they see it,*" said Mr Hurlston. *"I firmly believe that all-employee share ownership can, over a period, soften the tensions between the top executive when employees receive the rewards of ownership and the voice which goes with it."*

Elissavet Grout and **Kevin Donegan** of **Travers Smith** took up the theme of expanding plans offshore.

From the chairman

Sir Oliver Letwin, of recent fame, was by a country mile the most thoughtful politician I met in half a century of work. To visit him was like taking part in an Oxbridge tutorial. His quality of thinking and his ability to make bridges in Westminster are just what we need now if we are create a new model of employee share ownership fit for the current century. I shall drop him a line. As we watch, the Letwin plan may have gone the way of the coffee house chats of 1659 when the brightest people designed utopian futures.....until interrupted by the enigmatic arrival of General Monk: "what is under Monk's hood?" they asked. But it was unlikely that even he knew the immediate answer.

Other than Oliver my favourite parliamentarian was the late Earl Gray, perhaps at the other end of the intellectual spectrum, but a man whose ancestors had signed off the execution of Charles King and Martyr and introduced the Reform Bill of 1832: high moments of our history, presented in a modest demeanour.

The outcome we need is a less partisan approach, such as oddly the United States enjoys. It is no accident that employee ownership levels there are factors higher: the longer-term members of Congress make up for shorter executive spans. In the UK the average small business minister lasts less than a year and amid the current spasms hardly anybody knows who is or was minister of what! Dear Oliver .....

Malcolm Hurlston CBE

Elissavet said that these days certain SME start-ups quickly became large and multinational. They then wanted to export their share plans to their overseas employees – because they wanted to keep key staff, remain competitive and develop a one-stop culture.

She spelled out the hurdles to be overcome. **Kevin** said that discretionary equity plans for more senior employees presented problems of intertwining share options, the vesting of share awards and deferred shares. Companies might ask whether cash bonuses as an alternative might be better – they might prove less costly. However, share awards were now expected in western financial services and share based incentives were a great way of addressing high staff turnover rates. Travers Smith thought that participation rates of between 15 and 20 percent were "good or goodish".

Both speakers said that it was important to survey employees beforehand to find out whether they wanted such an equity plan or not. The main objectives for going global were: to develop long-term buy in from employees focussing on retention; to motivate staff to achieve short or long-term performance targets and/or simply giving shares to all employees as a 'mission thing.' Bringing in a third party administrator at an early stage helped avoid expensive legal fees later on if mistakes were made without one. Shareholders had to approve the global plan, so it was often a good idea to create a remuneration sub-committee to deal with issues instead of going back to the main board repeatedly.

Nicholas Greenacre of **White & Case** was certain that even if the proposed EU Withdrawal Agreement Bill (WA) were approved, Brexit would be delayed beyond March 29, until perhaps the end of June, a prediction which has proved correct. It was, he said, like "Kicking the can down the road." The PM's trap was 'My deal or no deal,' but as yet there was no parliamentary majority in favour of those two options. There was little or nothing in the WA about the vital services (including financial services) sector of the UK economy, however the European Union (Withdrawal) Act 2018, had clarified that the same rules and laws as currently in force would apply from day one of Brexit.

Problems over new or extended Employee Share Purchase Plans (ESPPs) may arise between Brexit day and July 21, when the new ***EU Prospectus Regulation*** took effect because the UK would be a *third country,* explained Nicholas. However, most new employee equity offers, like share options and/or restricted stock were outside the scope of the regulation.

On the employee account data privacy front, the EU General Data Protection Regulation (GDPR) had been incorporated into UK law since last May and would remain so, even if there were no Brexit deal. So UK based employee equity plans should not be affected, he said. The data protection regulator post Brexit, would be the UK Information Commissioner's Office.

The UK government might consider the bonus cap on executive remuneration in the event of a No Deal Brexit, but that would be unlikely if the WA were approved. There would be no need (see previous *newspad* issues) to re-approve exemption from the state aid rules of the **Enterprise Management Incentive,** said Mr Greenacre.

There had been significant withdrawal of investment from the UK since the Brexit Referendum, said Nicholas, as he wondered whether it was the right time to be putting company equity into employees' hands.

Jennifer Rudman, of **Equiniti**, outlined the benefits of the **Share Incentive Plan (SIP),** for both employers and employees. More than 500 companies were actively involved in the SIP, which had one million employee participants, who invested an average £88 monthly in it. Their average employee shareholdings were now worth around £7,650, while the highest employee SIP account was worth £209,169. Between the years 2003-17, Income Tax and NI relief from vestings within the scheme totalled £4.4bn. She discussed the award of free SIP shares, based on company, rather than individual employee, performance. Free shares were sometimes awarded to employees after a successful flotation or to mark an important corporate anniversary. Around two-thirds of employee partnership shareholders had company matching shares too, Jennifer revealed.

Another interesting SIP avenue was the extent to which employee participants built up their dividend shares. Although the annual dividend tax allowance had been cut from £5k to just £2k, the key point was that ***reinvested*** dividend income would not count against the allowance limit if the dividend share remained within the SIP for at least three years. However, *bad leavers* were being hit with heavy tax bills over their previous three years of reinvested dividend income – a harsh policy which Jennifer said should be eased. Employers could save a great deal in NI contributions by operating a SIP.

Next up was **Martin MacLeod** of **Deloitte,** who said that the new Corportate Governance code, which applies from July this year, required company directors to exercise independent judgement and discretion when authorising remuneration decisions, and take account not only of company performance but *wider circumstances* too. "The discretion to override is new – it means 'don't hide behind a formula' said Martin. Valid reasons for adjusting executive remuneration included: impacts of government support schemes; corporate share buy-backs; share price growth (or absence of) and currency fluctuations. Valid performance criteria for impacting reward varied from company to company, he said. Safety records were crucial for a mining company, but far less so for a bank.

Mr MacLeod said he didn't like the terms 'malus' and claw-back' when discussing executive reward reductions because it could get confusing – he much preferred 'recovery' and 'withholding' instead. According to the **Financial Reporting Council** they might apply when corporate payments had been based on erroneous or misleading data, misconduct, mis-statement of accounts, serious reputational damage or corporate failure,

Martin revealed that around one in six FTSE100 remuneration committees had exercised discretion to reduce formulaic outturns under 2018 incentive plans. Furthermore, the vast majority of FTSE350 companies had malus and/or claw-back mechanisms operating on annual bonus and LTIP awards.

Potential challenges to the new regime included disgruntled employees, so it was key to get all employees, especially executives, to sign up to contractual documents which covered the field, including possible pay reductions, but employers had to get the performance conditions correct and transparent, he added. Annual reports had to detail any discretion exercised in the scale of directors' remuneration.

David Craddock of his eponymously named consultancy service, tackled the problem of employee share plans in volatile share markets. Market realignments were occurring worldwide as trading blocs like the EU, the US and the Trans Pacific Partnership flexed their muscles. Their tariff policies could easily affect share prices on a wide scale, as was the case when the US introduced fresh tariffs against the import of many Chinese goods. The world financial crisis in 2008-10 had shown how difficult it could be to manage employees' expectations in terms of their gains on share scheme participation. It was a classic example of a situation in which collapsing share prices bore no resemblance to company performance. Some employee shareholders became obsessed by movements in the company share price and inflationary demands for bigger pay rises for the workforce sometimes followed dashed expectations from the plan. This was calamitous for cash-starved start-up businesses which relied on equity based incentives to retain key employees. It was essential for the company to continue to invest in the workforce; to work on other employee participation policies and demonstrate that the employee ownership culture was not limited to employee share schemes, he said.

His second main study point was that of *underwater options* - where the option price, typically set at the market value at the date of grant, was higher than the current market value as a consequence of a general downturn in the market. Often, as a result of sudden share price falls, it became difficult for companies to maintain their employees' interest in share schemes, said David. The Investment Association's guidelines didn't lend themselves easily to share price fluctuations: "Re-pricing or surrender and re-grant of awards for underwater share options is not appropriate." So any dialogue with the IA had to overcome this stricture. Low share prices resulted in a requirement for large quantities of shares to be allocated to meet particular values that had been allocated to employees, e.g. as a multiple of salary, putting demands on the IA guidelines for dilution.

One strategy was to abandon the traditional share option scheme in favour of an LTIP, often referred to as a performance share plan; with a nil option price, the spectre of underwater options could never arise. It was often easier to secure the support of the IA for an LTIP as it was perceived as more closely establishing "the identity of interest" between the existing shareholders and the employees, he maintained. With a nil option price, the LTIP required fewer shares than the traditional share option scheme to deliver the same monetary value to the employee – a highly efficient use of shares! Sometimes, fresh discounts could be introduced for re-grants as a buffer. The company should respond by active communications with employees. He called for a more positive approach by the government and reminded his audience that Eso worked best in companies where there was participative open management.

The IA sometimes preferred replacement options if the proposal was to satisfy the exercise through existing shares. The use of existing shares did not dilute existing shareholding and did not create additional dividends to be paid forever.

Damian Carnell, of **Willis Towers Watson,** spelled out how remuneration committees should engage with employees. Ceo base pay had not changed much over the past year, but the big news was that the median pay levels in quoted companies had to be exposed to shareholders and the public gaze, he said: 'How do you manage that – when employees find out that they are getting less than the median pay levels in their company?'' Pay ratios had broad audiences – the board and remuneration committees, employees, shareholders, media, trade unions, government, customers and voting proxy agencies. Corporate communication was all, including separate information for employees (e.g. the linkage between executive pay and wider company pay policy) and the outside world (e.g. what customers might think and key messages for the media). Companies should not skimp on spending for better communicating employee share ownership plans. Moreover, most investors tended to want the pay ratio – ceo: median pay levels – to be *wider* and not smaller, added Damian. Companies no longer could ignore employee engagement. The new corporate governance code said: "*The board should keep active engagement mechanisms under review so they remain effective. For engagement, one or combination of the following methods should be used [Provision 5]" – a director appointed from the workforce (*rarely used*); a formal workforce advisory panel; a designated non-executive director (*common already*) or alternative* *arrangements.* In addition, the directors' reporting regulation required UK companies employing more than 250 people to disclose how they had engaged with employees and how they had looked after their interests.

Research showed that companies with high levels of sustainable engagement outperformed those lacking energy and enablement. It showed up in the bottom line, in the form of increased profit margin in companies with high employee engagement, but only one third of surveyed employees felt highly engaged, said Damian.

Getting and keeping employees' attention was easier said than done. The average attention span was shrinking fast - from 12 to just eight seconds in recent years! The average person checked their mobile phone 110 times a day! Most web traffic now emanated from smartphones and tablets. Companies really had to know their audience in behavioural terms, what their main worries were and so forth – both employees and the public. Companies had to develop listening strategies – like in person and virtual focus groups, annual surveys and Pulse survey software - to enable them to get their messages clearly understood. So, Damian concluded, successful companies were inching towards a holistic approach to employee communications, including health care provision, community service concepts, resilience and anti-stress coaching, savings and wealth management and retirement provision.

Eva Simpson-Fryer of Pett Franklin told delegates about being an employee shareholder at **Atos,** the French based multinational IT services, including cyber security, company. The Atos Sprint 2016 plan was offered to employees in 23 countries, at a subscription price of €76 per share (*it now trades at c. €83 per share)* she said.

At least three months service was the main test of eligibility and employee participation was capped at a max 25 percent of salary. It comprised a 20 percent discount on the market share price, up to three matching shares per share purchased and a holding period of five years. There was a swap agreement with a bank to advance up to four times the amount of employee subscription. The purchase discount price was subject to tax deductions and any gains after the five year retention period were subject to capital gains tax, said Eva. Unfortunately, the take-up both among the graduate cohort and her office colleagues was very low, she said. There was an issue in western Europe about the general lack of desire among millennials generation to get involved with employee share ownership, she admitted. In addition, the Atos plan had involved upfront costs without any company loans; there was poor understanding of key terms in the plan, as well as risk aversion and lack of financial know-how among potential participants. The early exit terms included: for the acquisition or enlargement of main residence; marriage or entering into a civil partnership; divorce or separation; birth or adoption of a third child, specifically; termination of employment or even the creation of certain businesses (by that employee). Around 40 percent of those employees who did not participate in the plan said its affordability was an issue, while 47 percent thought they had not been with the company long enough to take part. Clearly employee communications had been an issue, she added.

Elaine Graham of Guernsey based trustee **Zedra,** where she is director of employer solutions**,** kicked off the afternoon session by reminding delegates that the main connection between trustees and the share plan community was the role played by employee benefit trusts (EBTs). Historically, EBT trustees managed share plan administration either on a spreadsheet or, for large plans, with an administrator. Trustees had developed partnership models to buy tech to facilitate online access/administration management tools. They had extensive tax, legal and compliance knowledge and EBT trustees interfaced with multiple services providers – registrars, brokers, custodians, share plan administrators and advisors. Nowadays, EBTs were to be found not only in the UK and in the US, but also in the Middle East and parts of the Far East. Even China was looking at the possible establishment of EBTs, she said. These trusts were 'incredibly flexible' but mainly acted as warehouses for employee shares. EBTs were often at the centre of a variety of share plans, nominee arrangements for private companies and now as an entity for post-employment holding periods.

Although having a professional independent trustee brought great comfort to beneficiaries that their company share investments were safe, occasionally – as in the case of motorway services group **Roadchef** – it could all go horribly wrong. Elaine said: '*The Roadchef story is the lesson all trustees especially novice in-house trustees should be acutely aware of with some of the following typical issues which can arise:- trustees are company directors which leads to conflicts of interest and where improper decisions can be made; a company might exercise too much control; in-house trustee companies more often than not did not have the in house expertise to run the EBT or the share plan administration - with poor record keeping; breaches of trust, tax, security or other laws occurring (often in ignorance)''* In addition, if the company was likely to experience a "lifecycle" event, such as sale or listing, an in-house trustee model might make potential purchasers/underwriters nervous.

There might be a risk of litigation over the liability of an in-house trustee company, in which directors may be personally liable. Ignorance was no defence in court! EBT trustees facilitated a large variety of plans but it was often executive plans which were hedged or facilitated through an EBT, said Elaine. The trustee had to determine whether the appropriate authority was in place for executives to trade the company's shares; did the EBT hold sufficient shares to facilitate share awards? What about the recycling of tax or sale shares? Had the relevant tax considerations been taken when considering recycling i.e. stamp duty due? – and so on. Elaine could not resist having a dig at those who kept using the term *'offshore'* as a means of slurring the image of the Channel Islands. "I use the term 'regulated' jurisdictions, because we are regulated, as per the Worldwide Disclosure Facility, whereas a number of jurisdictions remained unregulated."

Next up was an **Enterprise Management Incentive (EMI)** case study involving Sam O'Connor, ceo of internet accounting and banking account, **Coconut,** presented by **Robin Hartley** of Granted**,** which offers clients automated share plan services**.** In the Q & A format, Mr O'Connor, a former accountant with **PwC**, explained how the mission of Coconut was to take the pain out of book-keeping. As a start-up, the firm did not have a lot of cash, therefore giving staff share options incentives was a sensible move and attracted the right calibre of people. They had managed to install an EMI, despite government restrictions on the scheme's tax relief approval applying to the banking sector. Coconut's EMI had a four year options vesting model on a monthly basis. Coconut's EMI had no performance targets – staff were given one year in which to prove themselves. Mr O'Connor said Coconut was not a bank – the banking was done by a 'third party.' There was no doubt that the EMI option awards had helped the firm recruit, motivate and retain staff, because the UK fintech sector was competitive and so without an equity incentive scheme like EMI, Coconut would not be able to operate, he added.

Sue Wilson & Elizabeth Bowdler of **PwC** discussed the EMI risk and reward roller-coaster. They seized on a headline in a previous issue of *newspad* to ask whether EMI was truly an *El Dorado* of a share option scheme. The discretionary scheme certainly had generous limits from a tax-advantaged perspective – participants were allowed to have up to £250,000 in EMI options outstanding. There was no Income Tax or NI contributions to pay provided participants bought the shares at the original market value they held when the options were granted. In terms of tax efficiency EMI certainly was the bees' knees. The cost to the company of giving an employee £100,000 net via EMI was only £90,000, compared to almost £174,000 in non tax-advantaged share options and £101,250 in Company Share Option Plan (CSOP) options, they said.

PwC had been arranging many *Exit Only* EMIs, which carried no risk of having a lot more shareholders on the company's books, because the employee options would only vest after a takeover or another change of company control. Exit Only EMIs ticked all the right boxes because option holders realised value alongside other shareholders; cash flow was helped because the exercise price and any tax due only occurred on disposal; performance

conditions could focus on the hoped-for exit, which ensured there would be a market for the shares. However, there were traps to avoid falling into – Was the paperwork right? Was the wording too complex? What about qualifying subsidiaries, or Entrepreneurs Relief for leavers? Quite innocuous mistakes in the paperwork could result in heavy fines and the loss of substantial tax relief, they warned.

Could EMI be improved? – Could the notification process be made less painful? In practice, HMRC had to agree share valuations in advance of EMI options being issued to avoid the risk of the options being offered at less than market value.

Did the working time requirement (*at least 25 hour per week on average*) need to be reviewed? Were the disqualifying events too strict? Sue and Elizabeth asked delegates. EMI had and was delivering "amazing benefits," said Sue, but there were sometimes 'pernickety' objections to EMI structures in the process stage.

Colin Kendon, of **Bird & Bird,** put forward alternatives for companies which could not qualify for the EMI scheme – for example those with gross asset value in excess of £30m, or more than 250 employees, or those in excluded business sectors, such as banking, farming, property development, provision of legal services and ship-building. For these companies, the alternatives were: non-qualifying share options; company share options (CSOPs); nil paid shares; joint share ownership plans (JSOPs) and growth shares. Colin examined the tax efficiency of each alternative in turn, concluding that although using EMI usually gave the best outcomes, if a company could not meet the EMI conditions, then it should consider implementing **growth shares**, combined – if possible – with **Entrepreneurs Relief (ER)**.

He explained growth shares using this example: company A's articles are amended to create a new class of 'growth shares,' which have no rights other than to participate in sale proceeds (or distributions on a winding-up) pro-rata with ords but only after the ords have received a hurdle amount of (in this case) £11.11 per share. The manager formally agrees to pay (say) 10p per share (£1k in total) and as growth shares are issued fully paid, the manager has no further liability. The agreement gives company A a call option to purchase vested growth shares at cost on termination of employment. The Articles allow different specified hurdles for each issue of growth shares; the subscription agreement is private; the shares can be held by a nominee to keep the award confidential and it can include an irrevocable power of attorney to authorise the sale of shares/consent to variation of class rights. Outcomes: *Manager elects to pay income tax on "unrestricted market value" of the growth shares within 14 days of acquisition *If HMRC accept Unrestricted Market Value is no more than the subscription price, no income tax to pay on acquisition *If HMRC disagree, income tax to pay so contemporaneous professional valuation required to protect company A and manager *All gains taxed as capital on sale *company A is sold for £11m *Holders of 90,000 ords receive first £1m (i.e. first £11.11 per share) *Balance distributed to holders of growth and ordinary shareholders pro-rata *Growth shareholder receives £10m/100,000 x 10,000 = £1m *Manager pays CGT at 20 percent so £200k *Employer does not obtain a CT deduction. However, although growth shares matched EMI on participant taxes (£100K in CGT) on £1m gain, there was no Corporation Tax relief for employers on growth shares, whereas there was £180K worth of CT savings for the employer using EMI.

CSOPs were easy to introduce, with fewer rules than EMI, but the tax and NI relief was limited to the first £30K on grant and the options had to be held for at least three years. It could prove costly to operate when used for executives in combination with non-qualifying options, however the company obtained CT relief on CSOP options, he said. JSOPs were used mainly by public companies, as they were quite complex to operate. Nil paid shares, where a manager agrees to buy 10,000 ords at (say) £10 per share, but doesn't pay for them until immediately before shares sold, left the participant liable to CGT at 20 percent on any gain, plus annual tax on the 'notional loan' and his employer could not get CT relief. However, the overall bill fell if he/she qualified for ER, as the gain would be subject to CGT at only ten percent and the notional loan tax would no longer apply, but the rules were strict and if the company were liquidated, the individual would lose his/her money. Non-qualifying options were often not a runner – they could incur a tax charge of up to 54 percent – which was extremely painful, said Colin.

Lastly, **William Franklin** of **Pett Franklin** introduced hybrid **Employee Ownership Trusts (EOT**s) and their relation to employee share ownership. EOTs were the new style Management Buy Out (MBO), said William. The basic structure was that the business owner sold 100 percent (or at least a controlling interest) of the shares to an Esop trustee. The great prize was a complete cgt exemption for the ex-owner on the sale or his/her shares to the trust. For the employees, there was an annual £3,600 Income Tax exemption on certain bonuses paid to all employees. So the owner was owed the debt, assuming the workforce could not afford to buy the controlling shares straight off. EOTs were usually good examples of *patient capital,* as repayment to the former owner is often made via a long-term loan over a number of years. The concept was not only to encourage more employee ownership per se, but also to encourage a culture of employee responsibility, as well as rights, William explained. Setting the share price at a sustainable level was crucial for its future success.

Many claimed that EOTs were not real financial participation vehicles because the employees did not normally receive company shares as individuals – since they were retained by the trust. However, said William, it was perfectly possible for share schemes to be set up for some or all the employees within the framework of an EOT. The founder vendors could keep a minority shareholding in their company and even the tax relief. These variations were what he termed '*Hybrid EOTs*. Such hybrids were proving popular – he had been working on a dozen company EOTs recently and all but one had chosen the hybrid solution, said William. The overall idea in this case was to have direct and indirect ownership at the same time.

He discussed the role of the trustee director in an EOT. An EOT board could act as a *supervisory board*, which could sit in an overarching role vis-à-vis the normal company board, which would continue to run its day-to-day business, he suggested. This would replicate to some degree the continental system of supervisory boards which tend to have direct employee representation.

Electronic copies of the presentation slides are available at £100 plus vat from esop@esopcentre.com

Esop supporter **Paul Jackson,** columnist for **Investors Chronicle,** presented the inaugural ***newspad*** **Star Awards** at the reception which concluded the symposium. Star winners received framed certificates. The award judges were: **Damian Carnell**, director at Willis Towers Watson, specialist in executive reward and employee share plans; **Anna Watch,** head of executive share plans (governance & compliance) at member firm BT, **Robert Head**, director of Neo Reward and formerly head of global share plans at **Pearson** with Centre chairman **Malcolm Hurlston CBE** chairing.

Before the presentations, the chairman thanked **Mahesh Varia,** partner and head of incentives and remuneration at **Travers Smith**, for having lent the group's excellent conference facilities to the Centre for the day.

Mr Hurlston said he hoped that employees would pull their employers harder to either introduce or extend employee share ownership in their businesses. It was amazing that, after so many years, employers still had to do all the pushing. He said the star award winners had all submitted all-employee share plans of the highest quality.

Jennifer Rudman collected a star award on behalf of client **easyJet,** which was the winner of the *newspad best international all-employee share plan* award. The chairman praised easyJet's generous plan with its free share awards across the board internationally, which had attracted a more than 90 percent of employees to sign up.

Joanne Mitchell of Computershare collected the star award on behalf of client **Rolls Royce**, which was a finalist for both the *best international all-employee share plan* award in the larger company category and in the *best share plans communications* category.

Esop barrister David Pett, a member of the Centre's steering committee, collected the star award on behalf of **Xtrac,** of which he is employee trustee director**.** Xtrac, the automotive transmission technology company, which designs world-class gear boxes, won the *best all-employee share plan* award in a company with fewer than 5,000 employees. Jennifer Rudman collected another star award in this category on behalf of **Landsec**, the UK's largest commercial property development and investment company.

The *best share plans communications* category was won by Newbury-based **Micro Focus,** an information technology company which builds, sells and supports software. It has 16,000 employees in 36 countries. Its star award was collected at the presentation by Joanne Mitchell of Computershare.

Louise Sutton of **Unilever** collected the star award for Unilever's success in the *best use of video communication*.

Alison Miller of **BAE Systems,** which won a star award for its victory in the *most creative solution* (to devising an appropriate employee share ownership scheme), asked Joanne Mitchell of Computershare to collect the award on BAE's behalf. The chairman praised the BAE scheme, not least because it had successfully dealt with Sharia Law compliance. The company had a workforce of 83,000 in more than 40 countries, employing 6000 in Saudi Arabia alone – with a local workforce previously largely UK ex-pats, but now comprising 65 percent Saudi nationals, many of whom initially did not know much about share schemes.

The Laurie Brennan award for 'astounding' achievement in employee share ownership went to *newspad* editor **Fred Hackworth** for his extensive coverage of the on-going fight by former **Roadchef** Esop participants to obtain their High Court ordered compensation for the lost unrealised value of their employee shareholdings after the sale of the motorway services chain to Nikko in 1998 by ex Roadchef chairman and md, Tim Ingram-Hill.

The symposium e-brochure was logo sponsored by Channel Islands based trustee members **Estera** and **Zedra.**

EVENTS

Jersey seminar, May 17

The next share schemes and trustees seminar will take place in **Jersey** on **Friday, May 17 2019**. The joint **Esop Institute/Society of Trust & Estate Practitioners (STEP)** event will be at the Pomme d'Or hotel in St Helier. Don't miss this great opportunity to update your knowledge on the key issues. Talks will cover EBTs and the Common Reporting Standard; Share scheme and EBT issues on transactions; Entrepreneurs' Relief – a review following the introduction of the economic ownership test; an update on developments in UK employment taxes and much else. The presentations will run from 9:00 am to 1:00 pm (approx.), followed by lunch for delegates and speakers. **Ticket prices**: Esop Centre/ STEP members: **£375**; Non-members: **£480.**

Early-bird: *book and pay before **April 5** 2019 to choose one of the following early-bird discounts for this unique half-day event: 50 percent off a third delegate, or 10 percent off total. Only one early bird offer can be used for each organisation, whichever gives you the larger discount.* Reserve your place by emailing events@esopcentre.com or call the Centre on +44 (0)20 7239 4971.

UK CORNER

Split profits with employees says Select Committee

Big companies should split their profits with employees and give them a say in how chief executives are paid, or risk a complete breakdown of trust in the capitalist system, warned the all party Business, Energy and Industrial Strategy (BEIS) Select Committee of MPs.

A series of "shaming" decisions – including the £85m bonus given to the ex **Persimmon** ceo – showed a need for fresh curbs on "executive greed … baked into the remuneration system," their report said. "*We conclude that the structure of executive pay has become too dominated by incentive-based elements that do not effectively drive decision making in the long-term interests of the company. Whilst welcoming evidence of a shift to extended terms for Long -Term Incentive Plans (LTIPs) we advocate a simpler structure based on fixed term salary plus deferred shares, vesting over a long period, and a much-reduced element of variable pay, which should be more aligned to the wider social responsibilities of companies. We argue for a much stronger link between executive and employee pay, for example by the greater use of profit-sharing schemes. We recommend an employee representative on the remuneration committee to strengthen this link.*"

The select committee gave as an example **Royal Mail**, where in 2018 the new group ceo, Rico Back, was paid a £5.8m '*golden hello'* to buy him out of his previous contract as ceo of successful parcels group **General Logistics Systems (GLS)**, part of the Royal Mail group too. His new basic salary was to be 17 percent higher than that of his predecessor, Moya Greene, who herself received a pay-out of £915,000 upon her departure. A 70 percent vote against the remuneration policy was recorded at the agm.

The report said: "One purported explanation for these persistently high levels of executive pay is that in an open and globalised economy, ever-larger multinational companies have to offer generous pay to attract the best of a limited talent pool. The UK certainly pays well. In Europe, only in Switzerland are ceos paid more than in the UK. All European countries pay less than in the US, where the structure of pay is much more heavily weighted in favour of long-term share-based incentive plans than basic salary. Only *one percent* of ceos are poached from rival firms; promotion from within is far more common. There is little evidence of a cut-throat international transfer market in top jobs driving up pay. The root causes of high executive pay, whilst not immune from global economic forces, are to be found, and fixed, at home.

"Another explanation for high executive pay is that large increases for UK ceos have flowed from the growth of companies and their success in increasing value to shareholders. Total shareholder return has increased in fairly close step with executive pay in the FTSE100 between 2009 and 2018. Total market cap for the FTSE 100 has increased from £3.4bn to £9bn in the same period. Given that executive pay is generally linked to an extent to company success, as demonstrated by increased returns to shareholders, it is to be expected that executive pay will be pulled upwards in times of growth and good company profitability. *But the spoils of this economic success have not been fairly shared. Executive pay increases have comfortably outstripped those in average earnings.* Since 2014 companies have continued to share the rewards of their success largely with their shareholders, in the form of dividends, and with senior management in the form of multi-million pound pay packages, rather than sharing the proceeds more evenly amongst their workforce, who sustain the business, through pay and pension contributions. Huge differentials in pay between those at the top and bottom remain the norm. Executive greed, fed by a heavy reliance on incentive pay, has been baked into the remuneration system. *With that comes a public perception of institutional unfairness that, if not addressed, is liable to foment hostility, accentuate a sense of injustice and undermine social cohesion and support for the current economic model.*

"We believe that executive pay should be simplified, more obviously geared to promoting companies' long-term objectives, and be linked more closely to that of the workforce as a whole. Greater transparency and simplicity will help shareholders hold boards to account. *We favour a simple structure based on fixed basic salary plus deferred shares, vesting over a long period, but subject to conditions to avoid "rewarding failure"*. Care needs to be taken to ensure that reforms are coherent as a package and do not permit gaming. *We support the greater use of profit sharing or other schemes designed to share profits more evenly.* Over time, the proportion of variable pay (including bonuses, share options and profit sharing) should be reduced substantially. The increase in certainty associated with proportionately more fixed pay should, if well managed, lead to a reduction in total remuneration awarded. *As a matter of practice, and to reduce the risk of Persimmon-type awards and associated reputational damage,* ***we recommend that remuneration committees should set, publish and explain an absolute cap on total remuneration for executives in any year.*** *The new regulator should be more prescriptive and interventionist, where necessary, in pursuit of these objectives and be prepared to publicly call out poor practice or behaviours.*

"Ceos, and shareholders, should be stewards of the long-term and broad interests of their companies rather than pursuing short-term financial goals: they should be rewarded accordingly. We believe that performance measures governing the payment of annual bonuses should be aimed at encouraging and rewarding increased productivity and support the company's wider responsibilities under section 172 of the Companies Act to have regard to the interests of its customers, suppliers and workforce. *We recommend that the new regulator engages with investors to develop guidelines on bonuses to ensure that they are genuinely stretching and a reward only for exceptional performance, rather than being effectively an expected element of annual salary.*"

Centre member **Willis Towers Watson** said: "In a strongly worded report, the Committee recommends a much greater involvement of the new regulator that will replace the FRC, asset managers and proxy advisers and recommends:

- Companies should appoint at least one employee representative to the remuneration committee.
- Reporting requirements on pay ratios should be expanded to include all employers with over 250 employees and that data on the lowest pay band also be disclosed.
- Executive pay should be simplified, more obviously geared to promoting companies' long-term objectives, and linked more closely to that of the workforce as a whole. The Committee favours a simple structure based on fixed basic salary plus deferred shares, vesting over a long period, subject to claw-back. The Committee encourages the use of profit-sharing or other schemes designed to

share profits more evenly with employees. Over time, the proportion of variable pay should be reduced substantially and the increased certainty associated with a reduction in total remuneration.

- Remuneration Committees should set, publish and explain an absolute cap on total remuneration for executives in any one year.
- The new regulator should notably require public explanations from companies that do not align directors' pension with the workforce, develop guidelines on bonuses to ensure that they only reward for exceptional performance monitor companies' disclosure on s172 and on compliance with the Corporate Governance Code and explore potential sanctions for companies that do not respond to significant dissent.

Disguised remuneration HMRC bills war zone

Just over half the 50,000 self-employed consultants caught up in **HMRC**'s loan charge crackdown (disguised remuneration) have already settled before the imminent **April 5** deadline, bringing in an extra **£1bn** in revenue for the Treasury. So said Treasury financial secretary, Mel Stride MP, in a letter published by the *FT*. In recent years, HMRC has opened more than 100 investigations into scheme promoters and others who, claimed Mr Stride, were "involved in avoidance, including those who sold loan schemes." A 2016 change in the law allowed HMRC to issue tax demands on such loans dating back to 1999 (*see March newspad*).

Around 23,000 others (individuals and company owners) have yet to settle, despite the risk of huge instant bills when the new fiscal year begins in April. The often complex arrangements – common in the early 2000s when they were widely regarded as legal – involved receiving income in the form of a tax-free loan, usually made via an ***employee benefit trust***.

Unofficial estimates are that the non-payers who are resisting HMRC's bills collectively owe a further **£2bn.** The logic of this is that those who owe the most usually take longer to settle, after exhausting all legal avenues first.

Mr Stride revealed that objectors had been hoist with their own petard, because the loan charge schemes were NOT retrospective in that the 'so-called' loans made to employees were still outstanding today. This is because there was a tacit understanding in some of these schemes that the employee would not have to repay the 'loan' in the near or mid-term future. Effectively, the minister rubbished criticism by the House of Lords economic affairs committee months ago, that HMRC's decision to pursue scheme users was "retrospective" and risked undermining access to justice for those affected.

If contractors or employees fail to settle before April 5, they will be hit by the full loan charge, which taxes all outstanding loans in *one* year. This *must* be paid by next January. Settlements made to date however are likely to have been less costly and those earning less than £50,000 a year will be given at least five years to pay.

Mr Stride said: "Eighty-five percent of the money brought in through settlements - totalling £1bn – has been from employers, rather than employees. Disguised remuneration is an aggressive and contrived form of tax avoidance in which earnings are disguised as "loans,'' typically routed to the recipient via an offshore trust. By claiming this is a loan and not earnings, scheme users attempt to avoid paying their fair share of tax.

"Some people have put millions of pounds through these schemes and the average annual earnings of those involved is double the national average. Seeking to avoid Income Tax and NI in this way has never been accommodated by HMRC. The loan charge is not retrospective and the so-called loans are still outstanding today."

HMRC said the affected group were warned long ago that bills would be coming and had had three years to prepare for the charge, but Sir Ed Davey MP, chairman of a parliamentary panel investigating the issue, said that some only found out in the past few weeks or months. In a letter to Sir Ed's panel, **Ruth Stanier**, HMRC director general, insisted that nobody would be forced to sell their home to pay their bill and bankruptcy would be used as a last resort.

Opportunist MPs threaten registers

The government was forced to pull a parliamentary Bill after a cross-party group of MPs, led by Dame Margaret Hodge and Andrew Mitchell, tabled an amendment intended to impose accelerated transparency rules on Britain's self-governing Crown Dependencies - **Guernsey, Jersey** and the **Isle of Man**.

Allegedly using headlines about '*tax havens'* as a cover, the MPs were trying to hijack a routine piece of Brexit legislation - protecting financial stability in the event of a no deal - by attaching an amendment on financial regulations in the Crown Dependencies, said Juliet Samuel, writing in *The Telegraph.* She claimed that the amendment they had wanted to pass in this way was, itself, "entirely misguided."

Their amendment, if passed, would have speeded up the imposition of regulations requiring the ultimate, beneficial owners of all UK companies to be listed on public registers from January 2021. Its advocates claimed that it would help the fight against money laundering. Hodge and Mitchell want to extend the law from the UK, imposing it on Crown Dependencies like Jersey and reducing the deadline for overseas territories like BVI to comply too.

"*Such a move would be a clear breach of the UK's constitutional settlement with its dependencies, in which Britain runs their foreign policy and requires democratic government, but does not otherwise interfere*" she said.

For criminals looking for total anonymity to launder money from corruption, evade tax or run a terrorist network, registering their shell companies in a British Crown Dependency would not be a very clever choice, added Ms Samuel. According to a 2014 study by three academics, these offshore 'havens' are among the most likely places to comply with international laws requiring people registering new companies to prove their identity. While writing their book, *Global Shell Games*, the authors spent months registering shell companies in dozens of countries and found that they were asked for identity documents in a shockingly low number of cases. What's most striking about the results, though, is that the worst performers were not places like Jersey - they were onshore.

*In fact**, Jersey,** the **Isle of Man** and the **Cayman Islands** had compliance rates of **100 percent, 94 percent** and **100 percent** respectively. The rate in the UK proper, by contrast, was just 51 percent. Moreover, the best place in the world for criminal masterminds would not even be a place like Panama (29 percent), but the US state of **Delaware**, with its shocking compliance rate of just **six percent***

"This does not seem to feature on the radar of MPs and campaigners going after offshore 'secrecy havens,' as *Transparency International* dubs them. That is because they are confusing two very different things: secrecy and privacy," said Ms Samuel.

"Secrecy means that you can hide things not only from the public, but from legitimate authorities, like governments investigating crimes. Secrecy means that a police force trying to track down the owner of a trafficking network or a tax agency hunting hidden assets comes to a dead end, because a company's registration documents simply do not indicate who the real owner is. Privacy, as protected by places like Jersey and the Isle of Man, is something quite different. Privacy means that the names of a company owner are not routinely published, but if a legitimate authority demands them as part of an investigation, they are available. This is the regime operated by British overseas territories and dependencies.

"If all of this information were suddenly made public, some cases of corruption that governments have not spent the time or money to pursue would undoubtedly be uncovered. However, this information is already available to governments if they choose to request it. Conversely, there are good reasons why privacy is important; the first being commercial: a struggling business woman wishes to negotiate a sale to a potential buyer of an asset. However, she knows that if she reveals her identity, the buyer will know she's desperate and price accordingly. So she negotiates via an anonymous company. There is nothing wrong with this. The second relates to personal safety. A celebrity who is being stalked wants to buy a new house in London. She'd rather that her house ownership were not published on a transparency register and so uses an offshore company, perfectly legitimately. The third is political: a Chinese dissident being harassed by the authorities wishes to move some of her assets offshore to a secure jurisdiction. She trusts that Jersey authorities would protect her details from political meddling and would rather the Chinese government couldn't simply look her up on a public register."

Governments are struggling to collect corporate taxes properly and keep up with global crime networks, but the answer is not to throw out the concept of privacy. It is to reform corporate taxes and to extend, use and enforce the laws that rightly already exist to ensure accountability and access to information by legitimate authorities, added Ms Samuel. If companies in the BVI or Guernsey are being used for money laundering, it is not because this is legal, but because the law isn't being enforced.

Legal group IPO boost for Equiniti

Share plan administrator and payment provider **Equiniti Group** was appointed by Manchester based legal group **DWF Group** to administer its initial public offering (IPO) and as its share registrar. The FTSE 250 company said the partnership flotation had seen it deliver 300 million shares to investors, including DWF's partners, using its market-leading platforms and deep industry knowledge. DWF, which has 2,800 employees and 27 offices worldwide, listed on the UK main market with a market capitalisation of £366m. This made it the largest listing to date this year. Equiniti said it followed the trend of UK law firms joining the public market, after rules about ownership changed in 2012, with DWF being the largest firm to list. Equiniti's board said large UK floats had remained strong, with an upturn on more than £500m listings from 2017 to 2018. Equiniti, which was registrar to about half the FTSE100, assisted 21 companies to float on the London Stock Exchange in 2018, including the two largest - **Aston Martin Lagonda** and **Quilter**. The DWF appointment came at a time when a record number of issuers were selecting Equiniti as their service provider, the board claimed. In addition to IPOs, it had won 11 share registration and 17 employee share plan transfers last year.

Intertrust enters share plan admin market

Financial services administration specialist and Centre member **Intertrust** (Ireland) entered the share plan admin market in an effort to attract companies not served by the main market suppliers. Major players, such as **Computershare** or **Equiniti,** tend to target mainly large listed entities while Intertrust is looking both at SMEs and smaller quoted companies, as well as large corporates. Through its Jersey office, Amsterdam-headquartered Intertrust already offers this service mainly to some Irish companies which will come under control of Intertrust's expanding Dublin office. More than 500 companies have approved profit-sharing schemes. Only about six percent of Irish employees are shareholders in the companies they work for compared to an EU average of 21.7 percent. Intertrust Ireland's md, Imelda Shine, said share plans are important for employers "looking for the means to attract and retain the very best talent".

YBS report makes wellbeing case

Yorkshire Building Society (YBS) is urging employers to take a greater role in supporting their employees and treat financial well-being on a par with physical and mental health and safety. A report produced by YBS and Salary Finance revealed that 60 percent of people said they often face problems paying surprise costs like car repairs or boiler breakdowns. Based on its survey conducted last August with over 10,053 UK employees in 25 sectors, YBS believes that almost two-thirds of working Britons do not have enough savings to meet unexpected bills.

Dividends must take account of pension schemes

Companies must stop dishing out fat payouts to shareholders if they are struggling to fill a hole in their pension scheme, warned **The Pensions Regulator (TPR),** which has a responsibility to safeguard pensions. It said that if an employer is "weak and unable to support the scheme" then it expects the "payment of shareholder distributions to have ceased". The disparity between shareholder dividends and pension contributions has been a major area of focus since the high-profile collapses of **BHS**, which crashed with a £571m pension black hole, and then **Carillion**, which operated 13 final salary pension schemes with 28,500 members.

"There have been too many cases recently where firms seemed able to afford large dividends and then went out of business leaving the pension scheme starved of cash," said Steve Webb, the former pensions minister who now works at Royal London. Frank Field, chairman of the Commons work and pensions committee, said it was "brilliant" news and the first statement the regulator had made that "I've been 110 percent happy with." Mr Field last year criticised Carillion for "falling short" on contributions for a decade while "shelling out dividends and handsome pay packets". TPR has since been piling pressure on companies that are paying bumper payouts to shareholders at the expense of their growing pension black holes. **Southern Water** was forced to pump more money into its pension fund in December, after an investigation by the regulator found an "imbalance" between the funds contributed to the scheme and the level of dividends paid to shareholders in 2016 and 2017.

Executive pay and pensions rancour in agm season

Shareholders are raising many issues with company boards during the new agm season, as concerns about executive pensions and the environment mount. The outsourcing sector is still haunted by **Carillion**'s collapse, followed by **Interserve** a fortnight ago. Last year agms were dominated by calls for restraint on executive reward. The house-builder **Persimmon** ousted ex ceo Jeff Fairburn, last November after a furore over his £85m *uncapped* LTIP bonus. It followed a 64 percent vote against the payout at its agm last April. "Pay obviously is going to be an issue again," said Alan MacDougall of Pensions & Investment Research Consultants (PIRC).

The rail and airline catering firm **SSP** was one of the first UK-listed firms to be given a bloody nose this time round over excessive pay. Around 33 percent of shareholders' votes were cast against the remuneration report after its ceo Kate Swann – formerly head of **WH Smith** – was granted a £1.6m bonus, equating to ***200 percent*** of her £811,824 salary.

PIRC said it was concerned about **Ryanair**'s latest bonus proposals for its ceo, Michael O'Leary, who would be given share options that could yield a paper profit of nearly €100m (£86m) if Ryanair's share price hits €21 (£18) [currently €12.20 (c. £11)] or annual profits double to €2bn (£1.7bn) within five years. "These latest announcements on share option schemes seem to us to be two steps back, as it were," MacDougall said.

HSBC was the first mega bank to suffer the shareholder '*hairdryer*' effect as ceo John Flint was forced to take a £248,000 pension contribution hit. Shareholder pressure forced the bank to revamp its pension plan for all its top executives. Unequal pension 'pay' is suddenly a "hot button topic" at banks' agms this year. Investors urged HSBC to change its pension payouts a month ago after it

emerged that Mr Flint was getting 30 percent of his base salary, or £372,000, in lieu of his pension while most other staff got 16 percent. HSBC said that after speaking to shareholders it had decided to reduce the cash in lieu of pension allowance to just ***ten percent of base salary.*** Mr Flint's pension cash payment falls to £124,000 this year. It means that his total pay for 2019 will be just over £1.2m. HSBC had earlier defended Mr Flint's higher payment following criticism, by claiming that the 30 percent figure was "equivalent to 16 percent of salary after UK income tax and NI deductions." It added that already the figure had been reduced from 50 percent of salary paid under the previous policy, in force before 2016. The **Investment Association (IA)** said it would flag up any executive director being paid a pension contribution of 25 percent of salary or more.

British Gas owner **Centrica,** property giant **British Land,** energy network **National Grid**, plumbing distributor **Ferguson** and rental company **Ashtead** were reviewing their executive pension policies with a view to cutting payouts as a proportion of salary. Centrica was about to announce that contributions for all executives would fall from 30 percent to 15 percent from June. British Land ceo Chris Grigg, who currently receives a pension top-up worth 35 percent of his basic pay, equivalent to an extra £294,000 a year, has agreed to an annual series of cuts. His contribution will be reduced by five percentage points every year until it represents 15 percent of his salary.

The IA, which represents 250 asset management firms with £7.7tn in assets under management, said members were honing in on inequality in pension schemes. "*Our members have been clear this is an issue of fairness and pension contributions should be aligned with the majority of the workforce*," said Andrew Ninian, the IA's director of stewardship and corporate governance. Voting agency **Glass Lewis** said that every company it had spoken to in the past six months had been urged to give "serious consideration" to investor expectations that payments to executive pension pots be brought in line with their UK workforce. In order to comply, any FTSE 350 company putting its remuneration policy to a shareholder vote this year will have to cut pension contributions for new executives from about 25 percent of their salary to 16 percent as a first step towards parity.

*António Horta-Osório, ceo of **Lloyds Banking Group** was accused of making an "insulting" sacrifice by agreeing to cap his pension payout while still pocketing another retirement contribution worth "several Ferraris". He agreed to cap his final salary pension scheme to the level of his 2014 pay following a backlash from staff, who had their schemes capped five years ago. However, he remained in the firing line again after staff union ***Affinity*** said the move shaved only a few thousand pounds off his pay packet. Instead of the £76,139 he was set to receive, the 55-year-old will receive a pension contribution payment of 'only' £73,200. The union is angry that Mr Horta-Osório is still receiving *one third* of his base salary in lieu of his pension while most staff get just 13 percent. Affinity general secretary Mark Brown said Mr Horta-Osório's sacrifice was "smoke and mirrors" as he is receiving enough pension allowance "to buy a Ferrari every year, or even two or three". Lloyds said that the reduction in pension allowance meant that Mr Horta-Osório's "fixed remuneration" would fall by £165,000. However, he had been compensated for this with the increase of his "fixed share award" of £150,000, albeit spread over five years.

*Another issue provoking agm dissention was gender inequality. Women accounted for just 27 percent of board positions across the UK's 350 largest listed companies last year, according to the latest Hampton-Alexander Review and shareholders worry that efforts towards parity have stalled. At the last count there were five UK-listed firms with all-male boards, and 74 have just one woman on the board. "This year, Glass Lewis and many investors will be turning our attention to so-called '***one and done***' boards," Mortell said. "This will likely mean negative voting recommendations at companies where progress has stalled and the nomination committee has failed to acknowledge the issue or disclose an action plan."

Reward agenda:** With greater political, media and public scrutiny, companies, must, more than ever, ensure that they are rewarding directors appropriately for performance, said Mirit Ehrenstein of Centre member **Linklaters.** Unsurprisingly, discontent about board pay levels had made its way on to the government's agenda and resulted in a series of legal changes, a new ***Corporate Governance Code and extra requirements from investors. These applied for financial years starting from January 1 2019 and companies had to plan now, not least to show that they are taking note of the prevailing public mood.

Remuneration committees need (among other things) to: **have power to reduce bonuses and long-term awards (LTIPs) when pay-outs do not reflect wider performance; *have at least five-year holding periods for LTIPs, and post-employment holding periods; *disclose and explain ceo: UK employees pay ratios; *have appropriate directors' salary increases alongside and those given to the wider workforce; and *set directors' pension contribution rates in line with the general approach to contributions to employees' pensions.*

One change ensured continued media focus on pay resolutions: FTSE companies incurring dissent of 20 percent or more to any resolution appeared on the Investment Association's public register (*sin bin*) will need to update that register with details of any action they are taking. That register enables the media, and others, to find out easily which companies have shareholders concerned about in-house executive reward packages. Therefore, remuneration committees must ensure that they formulate a flexible and suitable remuneration policy and report accurately on directors' pay. To assist with navigating this complex landscape, Linklaters has developed a new online product to help companies and their remuneration committees put together their directors' remuneration policy and report. The tool explains relevant rules and regulations (including the Corporate Governance Code), as well as specific information for the pay policy components, the single figure table disclosure, and all other content requirements for the remuneration report. It considers in detail the views of the Investment Association**,** the **GC100 and Investor Group, ISS, the PLSA** and **Legal & General Investment Management.**

The Esop Centre is considering at its steering committee on April 3 a suggested approach to highlighting all-employee shareholding in company reports.

BREXIT CORNER

*The Home Office announced further details about the arrangements for European Economic Area (EEA) nationals in the event of a no-deal Brexit, said Centre member **Abbiss Cadres.** EEA nationals will be able to enter the UK after a no-deal Brexit and stay for up to three months without needing any application for permission to be here. However if they want to live, work or study in the UK for longer than three months then they will have to apply for *European Temporary Leave to Remain*. That leave will be valid for 36 months but will not be extendable and will not lead to *Indefinite Leave to Remain*. If they want to stay longer they will have to apply the new Immigration Rules which will apply from January 1 2021. Non EEA family members of EEA nationals will have to apply for a family permit before they come to the UK. If EEA citizens want to be able to apply under the EU Settlement Scheme they will have to arrive before Brexit happens. UK businesses that operate only within the UK will be less impacted than businesses that operate internationally and have cross-border workers. Regardless of where we will be on March 30, employers can take certain steps in order to get their business and employees ready. Should the UK leave the EU without a deal, there are questions for employers to work through:

~Do you know where your employees are based at any point in time? Assess your key employees, where they are working in your business and whether they are likely to be affected by Brexit. Conduct an audit to identify their nationalities. Which UK nationals are working elsewhere in the EU or EFTA states. Which nationals from those countries are working in the UK? By identifying employees involved, where they are working, what their rights are and monitoring their immigration status, this will help plan for employee mobility restrictions and labour shortages that could result from Brexit. Can you support your employees and their families living in the UK or the EU? Check and monitor immigration status of UK inbound and outbound expatriate workers, the duration of their stay abroad or in the UK and when they can apply for permanent residence or citizenship.

~Have you reviewed your current and future short/ long term assignments and business travellers covering UK and EU countries? How will you deal with the end of freedom of movement? British passport holders will be able to travel to the EU for up to 90 days but their passports must comply with the **Schengen Border Code**. Other issues to pursue cover social security changes (if any), renewal of employment contracts, data protection provisions, driving licence exchanges and relations with trade unions and/or European Works councils.

*As yet, no agreement has been reached on the UK's access to the EU market. It is understood that EU regulators favour granting "equivalence" – a process by which the European Commission decides whether a third country's regulatory regime is equivalent to its own. However, Philip Hammond, the chancellor, has said that this is not adequate for the City's needs: "The EU regime is unilateral and access can be withdrawn with little to no notice."

The European authorities have, up to this point, made things as easy as possible for companies looking to set up operations in the EU. But over time it is inevitable that they will require financial institutions to staff-up their EU hubs.

COMPANIES

Cardiff-based insurer **Admiral Group** is again handing out £3,600 worth of free shares each to employees following its record group profit before tax of £479.3m for 2018. Around 10,000 staff will each receive the free shares. No wonder that Admiral is this year's best big company to work for in the UK, according to the annual awards by *The Sunday Times.* The company's directors have proposed a final dividend of 66 pence per share – up from 58 pence in 2017 – which will be paid on May 31. "I'm delighted that the group has reported another year of record profit," said chair Annette Court. "This is an endorsement of our distinctive culture, where the dedication and passion of our people are key to ensuring the best possible service for our customers and delivering another year of strong results."

The ceo of pharma giant **AstraZeneca** received £11.4m in reward last year - a ***nine percent*** increase - despite an ongoing shareholder revolt over his pay. The FTSE 100 company said Pascal Soriot's total pay included a £1.9m annual bonus and £7.7m of shares issued under a long-term incentive scheme. He is being awarded a potential maximum £10m for 2019, which includes a three percent increase in salary to £1.3m, an annual bonus and long-term share awards dependent on financial targets. AstraZeneca revealed that Soriot earns 160 times his average employee's salary. The pay hike came after AstraZeneca faced investor backlash over executive remuneration for two consecutive years.

*Troubled **Deutsche Bank** doubled the pay of its ceo and investment banking boss despite the threat of sweeping job losses. The German banking giant, which has more than 91,000 staff and is one of the City's biggest employers, is in discussions with rival **Commerzbank** about a tie-up that unions warn could put up to 30,000 jobs at risk. However, Deutsche Bank admitted that ceo Christian Sewing's total pay doubled to €7m (£6m) in 2018. Mr Sewing and other members of the management team received bonuses for the first time in four years. Garth Ritchie, who runs Deutsche's struggling investment bank, was paid even more than Mr Sewing with total earnings of €8.6m – more than double the amount he took home the previous year. The bank said this was because he had been "entrusted with an additional responsibility in connection with the implications of Brexit". In total 643 staff were paid at least €1m for the year, fewer millionaires than in 2017 but more than double the number in 2016. The figures paled in comparison with the amount **Credit Suisse** ceo Tidjane Thiam was awarded - 12.65m Swiss francs (£9.65m) for 2018 - a 30 percent pay rise.

***Diaceutics**, an employee-owned company that specialises in diagnostic medicine debuted on the **AIM** stock market on March 21, after raising around £20m from investors. It was founded in Northern Ireland in 2005 by entrepreneur Peter Keeling and has since grown into a business with a £10m annual turnover. Diaceutics is owned by its 46 employees and has no private equity backing, with a small amount of bank debt. Eight staff, including Keeling, sold shares worth £3.75m, while the remaining £17m was in newly issued stock. After costs, the company will have earned about £15m from the flotation that will be reinvested and used to pay down debt. Big pharmaceutical companies such as **AstraZeneca** and **GlaxoSmithKline** employ Diaceutics to ensure the diagnostic equipment and tests needed to match a patient with a particular drug are in the right labs, near the physicians who need them, and that doctors understand how to read the results.

*Charles Horton, former ceo of **Govia Thameslink,** was given a payoff of almost £400,000 after he quit last summer in the wake a bungled train timetable overhaul. He received £386,000 '*in lieu of notice,*' a company filing revealed. He resigned last June after the biggest timetable change for decades spectacularly backfired. Thousands of passengers were left stranded as hundreds of trains were cancelled each day in disruption that reverberated throughout the summer. Govia Thameslink, which operates one in every five of Britain's services and is the country's biggest network, changed the time of every one of its trains.

***John Lewis** and **Waitrose** unveiled their lowest bonus pot for staff (referred to as *partners*) - just three percent - in more than half a century as lower consumer demand, pressure from economic uncertainty and weakness in sterling pushed overall group profits down 45 percent to £160m. Cash bonuses at the '*employee-owned'* group were cut for the sixth consecutive year. Three percent of annual salary is the lowest since 1954 and translates to roughly two weeks' pay for the 83,000 employees at **John Lewis Partnership (JLP)**. The bonus pot is worth £44.7m, down from £74m the previous year when bonuses amounted to five percent of staff's earnings. Sir Charlie Mayfield, JLP chairman said that challenging trading conditions and lower consumer confidence had dented earnings. The retailer had chosen to invest in improving stores and upgrading IT systems. "One of the key features from this past year is the amount that we put into training and developing our people," he said. "We think that's a cornerstone of how we're going to compete." The company will close five unprofitable Waitrose supermarkets in June, leading to the loss of 440 jobs. Cuts come as the supermarket prepares to develop its website into a bigger source of income. Operating profit at Waitrose was up 18 percent to £203.2m, but it fell 56 percent to £114.7m at John Lewis.

*Software giant **Micro Focus** - despite the *newspad* star it had received for communications - faces a shareholder rebellion over a move to give bosses an extra year to hit targets, which could allow them to share a £268m bonus bonanza. The FTSE 100 company's remuneration committee is accused by voting agency **Glass Lewis** of having 'not fulfilled' its duties. The influential shareholder advisory body urged investors to vote against the re-election of committee chairwoman Amanda Brown and the three other members – Darren Roos, Silke Scheiber and Karen Slatford – at the agm on March 29. It recommended investors vote against the remuneration report too. Micro Focus granted the time extension after the botched integration of its £6.5bn takeover of assets from **Hewlett Packard Enterprise** made the share price slide. For the awards to pay out in full, the share price – now £18.45 – must hit £34 by September 2020. No payouts will be triggered unless it reaches £25. The time extension had angered investors. **Aviva Investors** said it would challenge the firm ahead of the agm. Glass Lewis said it was 'deeply troubled' by the 'grossly excessive' bonus scheme which was 'sharply divergent from good practice'. More than 30 senior executives stand to gain. The top four could share up to £110m and executive chairman Kevin Loosemore may pocket £37.4m. Glass Lewis added: 'We question the committee's use of discretion in amending the performance period to begin and end one year later, thereby allowing the executives an additional year to meet the targets.' Micro Focus said the changes were 'fully consistent' with the remuneration policy which was supported by Glass Lewis and approved by shareholders in September 2017. It said the time change 'simply aligned the performance period to the 2020 business plan'.

***LSE listings fall:** Flotations of luxury car maker **Aston Martin** and **Funding Circle**, the UK's biggest commercial online loan provider, failed to boost the London Stock Exchange as the value of listings fell by a third last year. The number of businesses that went public in London dropped from 108 to 79 during 2018, while the amount of money raised from stock market flotations fell to £9.6bn, down £5.5bn on the previous year. Companies including **Vannin Capital**, a litigation funder, and **Sazka**, the Czech lottery provider, shelved their UK listing plans in October because of rocky market conditions, the same month that Aston Martin staff were left sitting on thousands of pounds of paper losses after the company's shares crashed following its flotation.

***Royal Mail**'s shares have not recovered, disappointing its investors and employee shareholders alike. The shares were floated at **330p** each in 2013 when the business was privatised and stood at 631p in May last year. They are now trading at c 240p, which must be a worry to its 130,000 postal employee shareholders. However, ceo Rico Back spent almost £400,000 buying RM shares at around 260p to show he has '*skin in the game*.' In addition, about 35,000 RM employees paid into its SAYE schemes, one of which has already vested.

*Ben Van Beurden, ceo of **Royal Dutch Shell,** will take home more than £17m for 2018 after doubling his pay packet from the previous year. He was awarded a total of €20.1m (£17.2m) for the year in which Shell's profits bounded to their highest in four years. However, the bulk of his reward packet was due to long-term remuneration rewards for his achievements since the oil market crash. Shell's long-term incentive plan (LTIP) paid out €15.2m to Mr Van Beurden last year, compared to just €4m in 2017. For 2018, Van Beurden received €1.53m in base salary and benefits and an annual bonus of €3m. Benefits worth €32,000 may have included a car allowance, transport between his home and office, spouse travel and medical insurance. However, the lion's share of the payment came from a 2016 long-term incentive plan, which paid out €15.2m. He was paid 143 times what the average employee is paid. Shell's remuneration committee offered the comparison for the first time for the year in which Van Beurden's pay leapt by 127 percent, meaning future annual increases were likely to fall dramatically. The left-leaning **High Pay Centre** said it was “ludicrous” to argue that the Shell boss would not have worked as hard or effectively without these “vast incentive payments”. A spokesman for the think tank said: “Equally, it’s wrong to attribute whatever success the company has achieved to a single individual at the top. These very large payouts are indicative of a wider problem of corporate governance and culture. Remuneration committees are not nearly brave enough in asking questions about whether such largesse is necessary, or proportionate.” Shell’s remuneration committee said it had “acted carefully” in managing Mr Van Beurden’s financial rewards and was “sensitive to the wider societal discussions” over executive pay. It had reflected on Mr Van Beurden’s success in carrying out Shell’s multibillion-dollar acquisition of BG Group in 2016 and its subsequent $30bn divestment programme. It said he had undertaken major investments in North America and was shaping its approach to meeting the Paris climate goals. Shell’s profits last year rose more than a third to $21.4bn (£16bn) as cash flows from its streamlined portfolio of low cost oil and gas projects surged.

*The founder and ceo of fashion chain **Ted Baker**, Ray Kelvin, resigned following allegations of misconduct, including “forced hugging”. Mr Kelvin had been on a voluntary leave of absence since December last year following the misconduct allegations, which were denied by Kelvin, who owns 35 percent of the company with his shares worth £300m. He will not receive any severance pay, and any bonus payments he has earned for the past three years’ performance will lapse. He agreed to resign as ceo and director of the retail chain. He will not get a payout and his share options for 2015, 2016 and 2017 will lapse, although he is still entitled to almost 20,000 shares, awarded under a 2015 scheme, worth close to £400,000.

The beastliest bosses were revealed by Paul Jackson in his Investors Chronicle column. The two most senior directors of GVC owner of Ladbrokes Coral spooked investors by selling three quarters of their stakes in the company. The share price was 666p - the number of the beast in the biblical Book of Revelations. For anybody missing the connection, ceo Kenny Alexander sold exactly 2,061,475 shares, leaving himself with…..666,666! “Harbingers of disappointing updates to come?” mused Paul.

WORLD NEWSPAD

Australia: The prudential regulator has been urged to adopt a more prescriptive approach towards bank executive pay, with the royal commission calling for a rewrite of its prudential standards on remuneration to encourage banks to compensate staff for management of non-financial risks, reported the *Financial Review*. Calling for a tougher regulatory design of executive remuneration, the report said the **Australian Prudential Regulation Authority** needs to show more “intensity” and its traditional focus on financial soundness and stability has been too narrow. “The use of remuneration systems to reduce the risk of misconduct is a legitimate – and necessary – subject of concern for a prudential regulator,” the final report said. The final report said all banks must give “close attention to the connections between compensation, incentive and remuneration practices and regulatory, compliance and conduct risks.”

Irish bank pay caps and bonus restrictions are now a major worry, a group of investors told finance minister Paschal Donohoe, as the government weighs whether to ease pay caps at bailed-out lenders. At the meeting, investors told Donohoe that restrictions on executive pay at **AIB Group** and other partly state-owned lenders are “now a huge concern” even as they recognised the political sensitivity around easing restrictions, according to an internal summary of feedback prepared for the minister. Among the group planning to attend the meeting were representatives from Artemis Investment Management, Citadel and M&G Investments.

The Irish government caps salaries at €500,000 and banned bonuses at **AIB, Bank of Ireland** and **Permanent TSB Group Holdings** as part of state bailouts during the financial crisis. Even if bonuses are reinstated, payments over €20,000 would face an *89 percent super tax*. Donohoe rejected an AIB plan to reinstate bonuses last year. The Irish government hired Korn/Ferry International to review the caps. While that review may recommend easing the constraints, Donohoe told Bloomberg News in January he had no plans to ease the restrictions.

*__US:__ Northern California utility **Pacific Gas & Electric** said it won’t award $130m in employee bonuses because of its recent bankruptcy filing, a newspaper reported. Interim ceo John Simon cited California’s deadly wildfires and the company’s precarious financial state in an internal email message to workers on, the *San Francisco Chronicle* reported. Senior leaders and the company’s board of directors supported the decision, he said. “The more I stepped back and thought about the impacts the wildfires have had on so many people outside our company, regardless of fault, the more I came to believe paying (performance bonuses) in 2018 was not the right thing to do,” said Simon. PG&E has previously said it would not award executive bonuses this year. “We’re very upset,” said John Mader, president of the Engineers and Scientists of California union. I just don’t see how it’s constructive to confiscate employee compensation, especially the people ... who try and prevent these kinds of tragedies.”

The Employee Share Ownership Centre is a membership organisation which lobbies, informs and researches on behalf of employee share ownership.