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it's our business

newspad of the Employee Share Ownership Centre

Roadchef employee shareholders still await compensation

Anger is mounting over the three-year wait by more than 500 **Roadchef** service station employees for compensation of up to £20K–£30K each in lieu of their employee shares, which were removed from their EBT when control of their company changed hands.

Cardiff-based Capital Law, which helped Roadchef Employee Benefits Trustees Ltd (REBTL) win a High Court judgment in January 2014, is still unable to tell the Roadchef staff when they can expect their compensation payments.

Those close to the case blame HMRC which, according to reports, has yet to reach a decision on the level of tax liability of the compensation beneficiaries.

Centre chairman Malcolm Hurlston CBE, is writing to Treasury Financial Secretary Jane Ellison MP, asking when HMRC will sign off the tax issues and finally allow the long-suffering Roadchef employee shareholders to be paid.

Newspad has been told that collectively the original staff should share 61 percent of the total net compensation sum, while current staff collectively may expect 30 percent and employees who were non-participants in the share scheme may expect to share the remaining nine percent.

In a curious twist, Tim Ingram Hill, the ex Roadchef md at the centre of the employee shares controversy, apparently insisted that he would not advance the compensation cash unless the original trust beneficiaries – the original Roadchef staff – would get the lion's share of the cash. According to sources close to the case, the court later agreed to the appointment of three trustees to guarantee a three-way split of the compensation along these lines.

Newspad understands that, as frustration mounted, HMRC was sent an appeal to fix a flat income tax rate, say 10–15 percent, which all beneficiaries should pay – in order to speed up the payment process, but there has been no definitive reply. The issue of Capital Gains Tax should **not** arise because the Roadchef Esop participants had no choice over whether to retain or sell their employee shares, which were taken from them without their knowledge.

From the Chairman

Congratulations to DFDS boss Bent Østergaard for giving free shares to all his staff; following in the footsteps of Pony Ma at Tencent. Nothing matches a lead from the bridge, however well things may be done technically in the engine room. It would be good to see more British bosses going down the same route of personal association with empowering employees through shareholding. Even better to follow Patrick Gee of Roadchef who gave employees his own shares. Surely all ceos over a certain level should think about giving a real lead by offering shares from their personal holdings. It would not only transmit a clear message - it would help to ensure that trusts can be trusted. The plight of the Roadchef beneficiaries of Patrick Gee's concern (many of them now deceased and beyond the reach of recompense) should concern us all.

Malcolm Hurlston CBE

The Centre and others are scandalised by the extraordinary delay over processing the relevant compensation payments to these low-paid employee shareholders, so much so that the Centre made Roadchef a key case study – about what can go wrong in all-employee share schemes – at its summer conference in Rome two years ago.

All qualifying staff at Roadchef, which has 21 UK service stations, were set to benefit after its former md Patrick Gee, who had led the 1983 MBO of the firm, decided to give them about 20 percent of its shares in the mid-1980s. However, he died of hepatitis while the scheme was being set up and his successor, Tim Ingram Hill, who had run Travellers Fare cafes at London's mainline railway stations, unveiled one of the UK's first ESOPs a year later. Roadchef staff received an initial 12.25 percent of the equity – reserved for them on an equal basis. Gee's estate later gifted more shares to staff.

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By 1991 the Gee family had 23.2 percent of the equity, Ingram Hill had 21.5 percent, top managers had 15 percent and Roadchef staff, either directly or through the ESOP, had 34.8 percent. Seven years on, when Ingram Hill sold Roadchef to Japanese investors, the ownership had changed. He now controlled 62.2 percent and the staff's share was down to 4.4 percent.

The trustee's claim queried the 1998 transfer of shares in Roadchef between two trusts, EBT1 and EBT2. The original EBT – called EBT1 - operated an employee share ownership plan for the benefit of all qualifying Roadchef employees, while EBT2 was used to provide share incentives to senior management. The case concerned the circumstances in which the senior management trustees granted options over the shares to Ingram Hill personally, who served in senior posts at the company over the years, including as md, chairman and ceo.

It was not until a change in the law that the Roadchef EBT trustee was allowed to bring in **Harbour**, a litigation funding company, which agreed to fund the case in court.

REBTL argued that transfer of shares from EBT1 to EBT2 was void and that the transfer made was in breach of trust or breach of fiduciary duty owed to the beneficiaries of EBT1. There were further allegations that Ingram Hill dishonestly assisted in the breach, as he received the shares in the knowledge that they had been transferred in breach.

Mrs Justice Proudman found that, irrespective of any wrongdoing on the part of Ingram Hill, the transfer of shares was void as it was outside the power of the trustees. She held that the claimant could therefore void the transfer of the shares. The High Court found Ingram Hill liable for breach of fiduciary duty too as he had not obtained the informed consent of other directors because he did not tell them he intended to secure the options over the shares.

Yet it was not until many months later that REBTL could agree a confidential settlement amount, which Ingram Hill would pay - believed to be about **£27m**.

Several Roadchef beneficiaries have contacted *newspad* to complain about the unexplained delay in payment following our reports on the compensation battle. One such is Audrey Mclear. She said: "I first spoke to your office a few months back regarding non-payment of Roadchef shares, as of yet, after numerous phone calls over the last few days to Capital Law and Roadchef and REBTL Trustees, I feel as if I am getting totally fobbed off with the lack of information. The only statement they are giving is that the taxman is dealing with this, which has been going on now for more than two years."

Mrs Justice Proudman said that Ingram Hill's expenses in converting the options into shares and then selling them on to the new purchaser of Roadchef would have to be deducted from the overall settlement. Capital Law's fees will be heavy, as its lawyers, especially managing partner Chris Nott, have spent many years on the case. In addition, Harbour Litigation Funding is in line for a substantial fee.

"The case is proof of our long-term commitment to cases and demonstrates the value of funding to claimants with a strong case but no funds to pursue it. Without Harbour's funding this result would never have been achieved," Harbour said on its website.

The current owners of Roadchef have nothing to do with this share scheme scandal and helped REBTL by providing information about the original employees.

David Pett, founding partner of Centre member **Pett Franklin** said after the 2014 ruling: "The Trustees of the ESOP had acted in breach of their duties by benefitting the beneficiaries of the second EBT, rather than solely being concerned with the trustees of the trust they were responsible for. The acquisition of the shares by Mr Ingram Hill was not made in good faith. Further, he was in breach of his fiduciary duties as Trustee. To some extent, the case was peculiar to its own facts.

"There are some wider lessons to be drawn, however: Trustees of all trusts, including ESOPs and EBTs, owe extensive duties as Trustees. This includes acting at all times in the interests of the beneficiaries of the trust and avoiding a conflict between their own interests and those of the beneficiaries. This implies a requirement for independent decision making and full disclosure of potential conflicts."

EVENTS

Newspad Summit Paris 2017

The Centre's inaugural *newspad SUMMIT* will take place in central **Paris** on **Thursday June 15 and Friday June 16 2017**. Our new two-day summer event presents an ideal forum for leading players to keep au fait with the latest legal, regulatory, taxation, communication and market trends in international employee share schemes in both Europe and the US, including: OECD, the impact of Brexit on employee equity plans; doing business; discussing share plan strategies and networking. It will be expert and interactive. Papers submitted for the Summit will be published by *newspad* and open for discussion on the Centre website.

The Centre thanks the global legal group **Clifford Chance**, for hosting this event in its splendid offices at 1, rue D'Astorg, Paris 8, off Boulevard Haussmann.

If you would like to deliver a speaker presentation at this event, you should register by email now – giving a brief outline of your intended topic. Speakers benefit from a significant fee reduction, subject to agreed content, and will be charged only **£260**. Speaker firms and organisations will include: **Clifford Chance**, the **OECD,** the **International Association for Financial Participation** and **Pett Franklin.** A major company is waiting in the wings to give a presentation on the implementation of its global all -employee equity plan.

Delegate prices

Newspad offers the following registration fees.

Centre member practitioners: £395

Non-member practitioners: £560

Plan issuers: FREE (subject to £50 admin fee)

NB: These fees are not subject to VAT, as the event takes place outside the UK.

Registration and fee payment entitles all attendees to:

- Take part in all conference sessions
- Buffet lunch and refreshments during coffee breaks
- Programme with access to speech summaries
- Cocktail party early evening, June 15

To register as a delegate, please email the Centre at **global@esopcentre.com**

Visit the event page on our website for more information. The Summit will feature a 10:15 am start on Thursday, to allow day trippers to take the 7 am Eurostar from St Pancras, arriving in Paris at 10:15. Travel visas are not yet required... Your Paris contact is Centre international director Fred Hackworth. Email: fhackworth@esopcentre.com

Esop Centre/STEP Jersey conference 2017

The Centre's annual share schemes for trustees conference held in association with STEP Jersey will be on Friday May 12 at the Pomme d'Or Hotel, St Helier. Please mark the date in your diary.

London share schemes for SMEs 2017

Save the day for the next Esop Centre–Institute of Directors London share schemes for SMEs conference on Tuesday September 12 2017.

MOVERS & SHAKERS

Teresa James is now interim Assistant Company Secretary at **Altro Group** and based in Buntingford, Hertfordshire,

Centre member **Cytec** announced the arrival of **Simon Hurley**, in the post of solutions architect, to supplement its IT team. "Simon has an excellent reputation and a wealth of experience having worked in the share plan and related industry for over 18 years, most recently for Howells Associates," said Cytec md, **Richard Nelson**. "Simon is one of the few IT solutions professionals who is as comfortable sitting in front of clients as he is in front of a PC and it is his hands on personalised approach that will continue to differentiate Cytec from our competitors."

"Having seen the variety of projects that Cytec are currently working on, their future plans and investment in systems, I am delighted to be joining such an exciting and progressive business," said Simon. "I have always enjoyed working directly with clients and my objective is to add my own style to the way in which we support and deliver solutions for our customers." Cytec ceo **Nick Chinn** added: "There are few people who combine an in-depth knowledge of share plans and related matters with the ability to design robust tailored software solutions."

Ray Coe is client relationship specialist at **Global Shares**, to whom he moved late last year from MM&K.

Peter Mossop, long time director of executive incentives at Channel Islands based trustee and Centre member **SANNE Group** has left to pursue other interests. **Jon Cartmell**, who will jointly run the incentives division with **Tom Hicks**, is to be the Centre's main contact at Sanne from now on. Jon's email is: Jon.Cartmell@sannegroup.com In a farewell message, Peter told *newspad*: "I am leaving Sanne to pursue other interests outside the finance industry and to spend more time with my family. I will retain an association with the industry as an independent consultant assisting companies with transaction and corporate action management involving their employee trusts and assisting newly appointed company secretaries with health checks and governance reviews of the trusts they inherit with their new appointments. I have been in this industry for almost 20 years and I have forged some lifelong friendships. I am incredibly proud of the team and business that we have built at Sanne and I will remain a flag bearer for years to come. I have handed over to Tom Hicks and Jon Cartmell who will be joint heads of division going forward and I wish them the very best and continued success as the business goes from strength to strength."

Solium Capital, the leading global provider of software for share plan administration, financial reporting and compliance, announced that **Iain Wilson** had joined its management team as head of distribution, EMEA. Iain has more than 20 years of experience in the UK and international share plans industry. Prior to joining Solium, he was commercial director at Computershare. Iain said, "I have long admired Solium's determination to innovate in ways that benefit its clients and their plan participants." **Brian Craig**, Solium's md and UK head, said: "Iain possesses institutional knowledge of the UK and

global shareplans industry and he is a natural leader of people and process. We welcome his leadership and industry DNA, as we expand our influence and presence in the UK and European markets.”

Italian conservative **Antonio Tajani** was elected new president of the **European Parliament**. Mr Tajani, 63, is an ex-European Commissioner and takes over from Germany’s **Martin Schulz**. The European Parliament has the power to block or amend EU laws and will have the final say on whether to approve a Brexit deal with the UK.

Helen Gibbons, the **UK Shareholders Association**’s director, Europe, and its representative on the board of **Better Finance** – takes on an extra portfolio – that of media director. She will manage UKSA’s media presence, including design and content and with particular emphasis on social media, and be a contact point for media briefings. **UKSA** chairman **John Hunter** said: “This new function has been conspicuously absent from UKSA’s armoury. For those expecting instant miracles, I would remind you that Helen works full-time as a self-employed translator of European languages into English in the fields of finance and governance.”

MESSAGE BOARD

*Remuneration consultant **Patrick Neave**, formerly of the **Investment Association**, has asked Centre members for their views on employee shareholder voting: “With the publication of the Government’s Green Paper on Corporate Governance Reform, I am involved in a number of discussions. One of these has been the need for Remuneration Committees to consult more widely on executive remuneration than just their shareholders and to take account of the views of their employees. The question is on disclosure: *Do you think listed companies should be encouraged to disclose the aggregate voting result from shares held by their employees under share schemes whether voting on the Remuneration Report or Remuneration Policy (or any other resolution)? Do you think this is practicable, particularly for companies having, say a three percent employee share ownership and above?*” You can send your thoughts to Patrick at pnea@btinternet.com

*References to the Irish corporation tax rate in the *newspad* December issue’s report on the Centre’s **British Isles, Brexit & Say on Pay** symposium attracted the notice of **Kevin O’Kelly**, executive member of the Paris-based **International Association for Financial Participation (IAFP)** and researcher with the **European Trade Union Institute**. Kevin took issue with our summary of the presentation given by chartered accountant **Jeremy Mindell**, director of **Primondell**. What *newspad* said was: “Jeremy [Mindell] discussed the potential tax consequences of Brexit for the UK. Fiscal policy – changing tax rates and spending levels – would become more important in the years ahead, rather than monetary policy – interest rates and money supply – he forecast. Leaving the EU would enable the UK to fix its own tax rates directly and deal with the kind of competition posed by the Republic of Ireland’s 12.5 percent corporation tax rate, which the EU had failed to eradicate. On top of that was the issue of ASI (which owns Apple iPads and iPhones), which was incorporated in Ireland but managed in the US, so that it was resident in neither country, nor anywhere else, said Jeremy. A huge row was ongoing when the Commission told Ireland to demand around €13bn from Apple in back taxes as all ASI’s profits (it claimed) should be taxed there but the clock was ticking away on Ireland’s double business structures (separate Internet Protocol (IP) and sales activities) which would fall in 2020.”

Kevin, who regretted that he had been unable to attend the symposium, opined:

“I don’t know if Jeremy Mindell’s presentation was challenged, but if I had been there, I certainly would have had a go at him when it comes to Ireland’s relationship with the EU. The EU institutions never tried to ‘eradicate’ the Irish corporate tax rate. Taxation rates are a matter for Member States and it is NOT within the competence of the EU institutions, unless by unanimity – see Article 113 of the TFEU. The then French President Sarkozy did try to raise the (issue of the) Irish corporate tax rate at a European Council meeting in 2011, but got no support from other leaders. Second, Mr Mindell is completely mis-informed (and seems to depend on sensational media reports) about the European Commission’s determination on the non-payment of tax by Apple to the Irish Exchequer. There is a lot more to this saga than this superficial assessment, as reported in the *newspad*.”

Jeremy responded: “I would stress that any summary does not contain the full context of the presentation. Let me make it clear what was said at the presentation in respect to Ireland either in the

WHITE & CASE

body of the presentation or in the Q&A session:

- At present, there is no minimum corporation tax level imposed on a Europe basis unlike for VAT.
- The EU has the ability to strike down selective rates of corporation tax.
- In the Irish context, there was a selective rate of ten percent and when this was challenged, Ireland moved to a rate of 12.5 percent on all CT profits – and this has not been challenged.
- There is pressure from the EU to agree the CCTB (the Common Corporate Tax Base).
- Until recently, Ireland has not had a CFC regime, which made it more attractive for tax planning arrangements.
- The main issue with **Apple** is the way that US taxation works, the check the box and sub-part-f regime, which encourages the non-remittance of foreign profits and the harsh regime if they are remitted to the US. I clarified that Ireland is looking to appeal against this ruling from the EU regarding Apple and so it may be some time until this matter is resolved.

"In the Q&A it was asked whether low corporation tax rates were under potential threat from the EU. I pointed out that Ireland had successfully resisted any challenges to its 12.5 percent rate, even during the bail-out negotiations.

"I did point out that Ireland had an ally in the UK which resisted all harmonisation measures regarding direct taxes and has not looked kindly on either the CCTB or a minimum rate of corporation tax. Post Brexit, the loss of this member of 'the awkward squad' would make it more difficult to resist this in the future. Whilst every member state does have a veto, there has been a reluctance by other countries to use it, often relying on the UK to take the opprobrium of being the roadblock to greater European co-ordination. It therefore remains unclear as to whether the EU will adopt the measures which the commission is regularly proposing regarding CCTB and minimum tax rates. Other countries will need to step up to the plate if further harmonisation is to be resisted." Newspad welcomes lively follow up discussions.

Share schemes: are they good for you?

Incentive-related pay schemes can stress rather than motivate employees, according to research by the **University of East Anglia (UEA)**. The study explored the relationship between three types of 'contingent pay' – performance-related, profit-related, and employee share-ownership (Eso) – and positive employee attitudes such as job satisfaction, employee commitment and trust in management. Researchers found that only performance-related pay had a positive impact on all three employee attitudes. However the results, published in *Human Resource Management Journal*, confirm that performance-related pay is associated with more intense working. This could mean employees are encouraged to work too hard, leading to work-related stress or poor well-being, offsetting some of its positive impact on staff.

Incentive and variable pay has become increasingly important for motivating employees to perform productively at work and is seen as a way to encourage positive employee attitudes. It is one of the key elements of HR management systems aimed at achieving sustainable, competitive success for an organisation.

Despite research to suggest a positive relationship between variable pay and employee attitudes, it has been claimed that different pay arrangements may in fact intensify work. This new study, by UEA's Norwich Business School, involved 1,293 managers and 13,657 employees at 1,293 UK workplaces. Lead researcher Dr Chidiebere Ogbonnaya said: "By tying employees' performance to financial incentives, employers send signals to employees about their intention to reward extra work effort with more pay. Employees in turn receive these signals and feel obliged to work harder in exchange for more pay. Even though employees may value these earnings as a 'good thing', the ultimate beneficiary of their extra effort is the organisation. As a consequence, performance-related pay may be considered exploitative, or a management strategy that increases both earnings and work intensification."

Dr Ogbonnaya added: "The key thing for managers is to ensure some balance between employee job demands and measurement of rewards offered. Therefore, the nature of the relationships between performance-related pay and employee attitudes may depend on whether there is a perceived imbalance between intensive work effort and the availability of appropriate rewards."

In the UEA study, profit-related pay (PRP) only had positive relationships with job satisfaction, employee commitment and trust in management if PRP was distributed widely across the organisation. PRP was associated with lower job satisfaction, lower employee commitment and lower trust in management in those organisations that distributed profit-related pay only to a small proportion of the workforce. Co-author Professor Kevin Daniels said there was a need to encourage fairness and adequate

employee uptake of profit-sharing arrangements. "If PRP is spread across the workplace, employees may show greater acceptance and respond with positive attitudes," he said. The study used data from the 2011 Workplace Employment Relations Study, which is representative of 35 percent of all UK workplaces, including both the private and public sectors and most industries.

Happiness guru Prof Layard similarly found that share schemes made more people unhappy than they pleased. Both miss the US view (shared by the Centre) that ownership encourages employees to work smarter rather than harder.

UK CORNER

Hard Brexit impact on share schemes

UK based multinational companies and their advisers face many months of uncertainty over the impact of the looming 'hard Brexit' on their international all-employee share plans – in the wake of Prime Minister Theresa May's pledge to quit the EU's Single Market.

The UK share plan industry's hopes of a soft landing via-a-vis 'as you were' financial services to and from the EU – post Brexit (by March 31 2019) – almost vanished when Mrs May announced that the UK "cannot possibly" remain within the Single Market, as staying in it would mean "not leaving the EU at all".

EU officials had previously talked about making a post-Brexit UK pay contributions to the trading bloc as the price for retaining the UK's current 'passporting rights' to send tariff-free financial services, including employee equity plans, into any of the 28 member states.

However, as the PM, apparently, has turned her back on the Single Market and told them that she won't sign a bespoke deal at any old price, the same officials have dusted down their 'Plan B' – that of implementing high tariff barriers, post Brexit, on UK goods and services entering its Common Market of 443m consumers (without the UK) – ready for deployment against the UK after it serves notice to leave the EU under Article 50 of the Lisbon Treaty.

Mrs May's rejection of any 'off the shelf' model for the UK's future economic and trading relationship with the EU puts paid to speculation that the UK could join the
European Economic Area (EEA), whose members have near-full membership of the European Single Market. In return, they are subject to obligations under EU legislation in relevant areas and have to accept free movement of people.

This path could have major implications for UK based companies who in future may want to install new all-employee share plans on the European mainland.

Instead, Mrs May wants: the UK to have access to the European Single Market but not membership of it; a tariff-free customs union with the EU; freedom to sign trade deals with other countries; a close security relationship with the EU and a transitional deal between membership of the EU and life outside it – to avoid "a disruptive cliff edge." However, having access to the Single Market is nowhere near as good as being a member of it, in *newspad's view.*

Critics claimed that her wish list was like eating your cake, yet having it. Others compared it to an elaborate game of bluff – who is going to blink first?

The last hope of an orderly Brexit appeared to rest in the transitional pre Brexit arrangement the PM wants in order not to damage the UK financial sector severely. The EU's Brexit negotiator, Michel Barnier — who took an interest in employee ownership when he was a Commissioner, has said he is ready to negotiate about this.

Chancellor Philip Hammond said if the UK were "closed off" in trade terms by the rest of the EU, the UK could be forced into adopting a new economic model, which might mean cuts to corporation tax to allow the UK to entice business from elsewhere in Europe.

Mrs May's announcement vindicated the Centre's decision to include a session on Brexit in its symposium held last November at the City headquarters of member **White & Case**. Warnings about the likely effects of Brexit on employee share ownership schemes were spelled out during the two-day conference. Centre chairman **Malcolm Hurlston** said that Brexit was relevant because the UK's Prospectus Directive exemption might not survive long-term in EU jurisdictions and possible Brexit-induced changes may be on the way to share dealing rules and to the current share scheme data privacy regime.

Chartered accountant **Jeremy Mindell**, director of **Primondell**, told delegates that the UK's chances of remaining within the EEA were "vanishing by the day" and so the WTO route for the UK looked "almost a certainty." No wonder travel agents and others were very worried, he told delegates. He forecast that hundreds of lobbyists would soon be

scurrying back to the UK as Brexit neared. A 'hard Brexit' would mean**:** going back to bilateral agreements; separate VAT rates; abandoning special treatment for EU citizens and ignoring state aid rules.

The UK would resume its seat on the World Trade Organisation as a founder of the GATT. The UK would still be a member of the G7 and G20 groups and of the OECD (Organisation for Economic Co-operation & Development). Finally, he predicted that pension tax relief would be cut back in the March 2017 Budget.

Sara Cohen, corporate partner at **Lewis Silkin** talked about regulating Eso post Brexit. Two other impacts were: what would happen to EU State Aid restrictions and directors remuneration disclosures? Beyond those, would Brexit mean that we lost automatically our membership of the European Economic Area (EEA) – an issue which could be fought out in the courts? A US company used 'passporting' by installing a share plan in one member country and then using that blueprint to install it elsewhere within the EU, but would that apply to the UK too post Brexit?

Sara explained that if the UK didn't stay within the EEA, UK companies with EEA employees would not be within the Prospectus Directive employee share scheme exemption and it could be more onerous to extend their share schemes to those employees. The UK in turn might have its own regime which would make it more difficult for non-UK companies to include UK employees in their share plans and non-EEA countries could not benefit from intra-EU passporting, thus probably discouraging them from including UK employees in their share plans. Equally, however, the UK could introduce its own employee share scheme exemption or agree similar prospectus recognition rules. If the UK didn't remain in the EEA post Brexit, the Commission would have to confirm that the UK laws conferred adequate protection on employees.

Without this confirmation, express consent would be needed from employees to transfer of data between EEA countries – implying a big increase in administration time and costs, warned Sara.

On the bright side, the bar limiting **Enterprise Management Incentive (EMI)** applications – like the £30m gross assets limit and the maximum 250 employees requirement – could be eased if EU state aid restrictions no longer applied within the UK post Brexit.

One EU initiative in the pipeline, which the UK probably could not halt, was the **European Shareholders' Rights Directive**, which would be applied here, added Sara.

Post Brexit, the UK could require migrants to have a work permit before coming to work in the UK, with ministers able to prioritise different sectors. A combination of different models is an option, and the government says all possibilities are being considered. It had been reported that a visa waiver scheme, similar to that used by the US, could apply to Britons going to the EU. This could involve an online application and paying a fee in order to visit the EU, without requiring a full visa.

Nicholas Greenacre, global head of employment, compensation and benefits at **White & Case** thinks that Brexit should not fundamentally affect the ability of UK companies to offer shares to their employees in EU member states. "The new Prospectus Regulation, which contains a broader exemption for employee share plans, will allow both listed and unlisted issuers, whether from inside or outside the EU, to make offers of shares to employees in the EU with publication of a summary information document rather than a full prospectus," he said.

"Even if that extended exemption is not included in the final Regulation, the current prospectus filing requirement only generally applies to larger stock purchase plans operated by non-EU issuers, rather than option plans or free share plans, so this should not present a significant problem."

Nicholas told the symposium that there was a clash over bankers' bonuses between the Bank of England, which believed that risk pay should be maximised and the EU, which believed that only variable pay should be put at risk and fixed pay not touched. Despite UK government objections, stricter European Banking Authority (EBA) guidelines on bankers' bonuses now applied in the UK. So after the UK government lodged Article 50 notice to leave the EU by March 31, would the BoE be tempted to ignore the EBA guideline and thus improve the competitive position of UK banking?

Meanwhile, European institutions were preparing to be tough with the UK post Brexit – France was willing to grant an eight year exemption from its Wealth Tax to French citizens working in London in order to repatriate wealth creators and Italy was trying to get its bankers to go back to Milan by creating 'free zones' for banks.

Stephen Diosi, formerly of Centre member Linklaters and who now works for Mischon de Reya, warned that Brexit could be a nightmare for UK based international share schemes because the relevant Brussels-generated UK law and rules will fall away – necessitating transitional legislation to maintain the status quo whilst new UK specific laws are introduced to replace thousands of EU-derived rules – a process that many commentators consider will take at least a decade. He too singled out the future impact of EU Prospectus rules on UK companies post Brexit: "The most basic of share plan concepts, the grant of options and awards is subject to EU prospectus rules. This applies a single regime throughout the EU and provides a set of

exclusions and exemptions to enable plans to be operated across the EU without the tortuous and expensive requirement to produce a prospectus. However, companies based outside the EU cannot necessarily take advantage of these exemptions. UK companies with employees across the EU may find themselves subject to more onerous requirements than their EU competitors. This could make it far more difficult for them to extend their share plan arrangements more widely," added Mr Diosi.

*Centre member **Abbiss Cadres**, said: "With no precedent, and after 40 years of integration, there is much left to debate and unravel. The UK government has up to two years from triggering the exit mechanism to negotiate a new rule book to govern its future relationship with the EU. Despite the prolonged period of transition, it will be important that employers consider the implications for their business and employees of expected changes that may impact employment law, immigration, freedom of movement within the EU, international assignments and employee taxation as well as remuneration arrangements (including share plans)."

The present Prospectus Directive regime has the biggest impact on non UK and non EU issuers who operate plans, such as employee stock purchase plans, which are considered to be public offerings and therefore require a prospectus. Where a prospectus is required, companies are able to file one prospectus in their home EU member state and 'passport' the prospectus to any other EU state in which the ESPP offering qualifies as a public offering.

*Another key Brexit issue is that of **data privacy**. Operating share plans usually involves the transfer of sensitive personal data about employees between companies and administrators. The EU's new data protection law, the General Data Protection Regulation (GDPR), is already in play and companies have until May 25 2018 to make the necessary changes to ensure that they are compliant. Post Brexit, it would be for the UK effectively to adopt the GDPR or for the EU to determine that the UK otherwise imposes adequate protection for the storage and transfer of data relating to EU employees. The alternative routes of model clauses (which are currently being challenged in the ECJ) or express, informed consent from employees would bring extra administrative burdens. Were the UK to withdraw completely from the EU, the European Commission would have to rule that a post-Brexit UK provides an adequate level of protection for the rights and freedoms of data subjects. Without this ruling, employee data could not be exported from the EU to the UK without finding another lawful way of doing so, such as obtaining express consent or through model clauses, which would involve additional administrative burden, warned Mr Diosi.

Share scheme managers and HR chiefs at these banks and other financial houses are working extremely hard on the regulatory and tax implications for the employee shareholdings of staff about to be transferred abroad.

Idiot's guide to the single market etc.

The EU's Single Market as well as eliminating tariffs, quotas or taxes on trade, includes the free movement of goods, services, capital and people. A single market strives to remove so-called 'non-tariff barriers' – different rules on packaging, safety and standards and many others are abolished and the same rules and regulations apply across the area. There are EU-wide regulations covering a whole host of industries and products on everything from food standards and the use of chemicals to working hours and health and safety. It is an attempt to create a level playing field and a single market; this does not happen in a free trade zone. For goods, the single market was largely completed in 1992, but the market for services remains a work in progress a quarter of a century later. The EU has promised to introduce it many times, but several countries have dragged their feet. Even so, the City of London dominates financial services in the EU.

A customs union is different from a free trade area in that the countries that get together agree to apply the same tariffs to goods from outside the union. Once goods have cleared customs in one country they can be shipped to others in the union without further tariffs being imposed. The EU is a customs union. Norway pays to be part of the EU's Single Market, but it is not part of the Customs Union. So it sets its own tariffs on goods imported from outside the Single Market. But Norwegian goods (with exceptions for farm produce and fish) are imported tariff-free into the EU. That means that Norwegian exporters have to contend with what are called "rules of origin", to demonstrate that their goods qualify as having originated in Norway and are therefore eligible for tariff-free entry to EU countries.

The **World Trade Organisation (WTO)** Agreements provide the existing framework for global trade and contain key principles and rules, as well as a mechanism for the adjudication of disputes. The UK is currently precluded from resort to the WTO disputes mechanism in any disagreement with the EU or other member states. One of the key principles is non-discrimination in trade relations. This means that WTO members are not allowed, for example, to charge different tariffs on goods imported from different countries except in clearly defined and limited circumstances. Thus, following Brexit and assuming for the sake of argument that no trade agreement were reached between the UK and the EU, the EU would apply its standard external tariff rates to imports from the UK but would not be allowed to discriminate by

charging higher rates to the UK than to other non-EU countries. Similarly, the UK would apply its standard external tariffs to imports from the EU.

COMPANIES

The **Treasury** sold a further 460,000 shares in **Lloyds Banking Group**, bringing the UK taxpayers' stake in the bailed-out bank down below the six percent mark. However, the shares were sold for around 65.7p each, almost 8p below the 73.6p price paid by taxpayers when the government bought a 43 percent stake in Lloyds to keep it afloat in the aftermath of the 2007–8 financial crisis. So taxpayers lost about £5.5m on this deal. Lloyds employees can benefit from the group's two main tax-approved share schemes – SAYE-Sharesave and Sharematch, which is a Share Incentive Plan (SIP).

The Treasury is not planning further share sales in the 72 percent taxpayer owned **Royal Bank of Scotland (RBS)** for the moment following taxpayers' £1bn loss on the last RBS share sale by the Treasury in August 2015, when **UK Financial Investments**, the body that holds the Government's RBS stake, offloaded 5.4 percent of RBS at 330p a share – far short of the 502p price paid by the Government, on behalf of taxpayers, when it bailed out the bank at the height of the financial crisis. Yet **Equitable Life** policyholders are still awaiting further government payments of the compensation which the Parliamentary Ombudsman said they should have – six years ago. The Ombudsman found ten instances of Whitehall maladministration before Equitable Life, now a giant zombie fund in run-off, was forced to close to new business. Almost 500,000 individuals – and many more who were members of group pension schemes run by Equitable – have received only one payment, worth just 22.4 percent of what the Ombudsman said they were owed. Investment advisers say that UK employees' confidence in pension schemes has yet to recover from the Equitable Life disaster. Tory MP Bob Blackman said that the government's failure to pay up was an "unresolved open sore" in the politics of 'Mayism.'

The **John Lewis Partnership** warned that its annual staff cash bonus would be significantly lower than last year as it faced the impact of the post-Brexit slump in sterling. Charlie Mayfield, chairman of the staff-owned group, which includes **Waitrose**, said he anticipated a challenging year ahead as retailers would have to absorb a big chunk of the rising cost of importing goods, while coping with shoppers' shift to buying online. "Sterling, I think, is the dog that hasn't really barked," said Mayfield. He said a near 20 percent drop in the value of sterling had yet to affect most businesses because they had hedged their currency position for six months to a year, but warned that would now begin to unwind. This will be the fourth consecutive year that the group, which is collectively owned by its staff via an EBT, has reduced the payout, but it is highly unusual for it to cut it when profits rise. Last year its 91,500 'partner' employees were awarded bonuses of ten percent of salary, the lowest for 13 years, averaging just over £1,500 each. The bonus payouts started in 1920 and the highest award in recent years was 18 percent in 2011.

Personal Group Holdings recently notified its regulator and the LSE that it operates an Inland Revenue approved *All Employee Share Ownership Plan (AESOP)* allowing employees and directors the chance to buy 5p ords in the company via Personal Group Trustees Ltd. The 13th allocation period ended on December 31 and various directors and other PDMRs bought shares on January 1. As Centre member **Pinsent Masons** points out however, what were formerly known as Approved Employee Share Ownership Plans or *AESOPs* – introduced in 2000 as a means of encouraging employees at all levels to acquire shares in their employer – have long been known officially as **Share Incentive Plans** or **SIPs.** The name change was criticised at the time by some in the industry who wanted to see the words 'share ownership' kept in its title.

BlackRock warns on executive reward

The world's largest fund manager delivered a warning to those company boards that fail to stop awarding senior executives bumper reward packets. BlackRock told the chairs of the UK's biggest companies they must stop making big payments when executives leave and in lieu of pensions.

In a letter to the ceos of more than 300 UK companies, the US fund manager said it would only approve salary rises for top executives if firms increase workers' wages by a similar amount. BlackRock is a shareholder in every business listed on the FTSE 100 index, with £4.2 trillion of investments globally.

The fund manager said that severance payments – known as 'golden parachutes' – should no longer be made to executives who are sacked, choose to leave, or retire.

It could vote against the re-election of directors if its advice is ignored. BlackRock said: "Where we determine that executive pay is not aligned with the best long-term interests of shareholders, we will consider this in our voting decision for remuneration committee members' re-election." Reward packages for bosses should be strongly linked to sustainable returns over the long term, BlackRock added: "We consider misalignment of pay with performance as an indication of insufficient board oversight, which calls into question the quality of the board." However, its demands would only apply to new reward packages, rather than to executives already in post. Ceos of FTSE 100 firms have a median pay package of £4.3m, which is 140 times that of the

average employee, according to the High Pay Centre.

Esop Centre member **Deloitte** summarised BlackRock's main proposals thus:

- Pay should only be increased each year, if at all, at the same level as the wider employee workforce and in line with inflation. BlackRock expects a strong supporting rationale where a significant pay increase is given that is out of line with the rest of the workforce.
- The board should consider the pay ratio between the ceo and the rest of the executive team, looking at both the fixed and the total remuneration.
- Benchmarking should not be used to justify pay increases. Pay increases should reflect changes to the scope of the role and its complexity. Changes in company capital size are not considered an appropriate proxy for the complexity or justification for an increase in salary. Boards should wait a number of years post M&A before increasing remuneration to ensure the executives are delivering sustained performance.
- The results of benchmarking should be disclosed, particularly the peer group selected.
- Pension contributions are expected to be in line with the rest of the workforce for new contracts. Any downgrade of the workforce's pensions should also be applied to executive directors.
- Where companies introduce restricted share schemes:
- This should not result in a more complex pay package.
- The value of awards should be reduced by at least 50 percent compared to the variable pay previously available.
- Vesting/holding periods should have a longer timeframe, preferably a minimum of five years.
- A performance underpin should be applied.
- Shareholding requirements should be increased to at least 400 percent of fixed pay, which should be maintained for at least two years post departure.

Linking pay and performance:

- BlackRock believes that executive pay should be linked to 'strong and sustainable returns over the long-term, as opposed to short-term hikes in share prices'.
- There should be multiple performance metrics, the majority of which should be financial and at least 60 percent should be based on quantitative criteria.
- Retrospective disclosure should be provided on the performance achieved, broken down by measure, for quantitative and qualitative metrics.
- There is a preference for input metrics, which are 'within management's control to create economic value over the long-term', rather than output metrics such as TSR or EPS. Companies are also encouraged to use metrics related to the creation of value of the company, such as economic profit or a comparison of ROIC and the cost of capital. 'ESG-type' performance measures should be linked to material issues and these must be quantifiable, transparent and auditable. There should be no adjustment for currency fluctuations.
- Where used, BlackRock express a preference for relative TSR (as opposed to absolute) and for the exclusion of the potential effect of share buybacks and acquisitions on EPS calculations.
- Short-term and long-term incentive plans should be based on different sets of performance measures.
- When the vesting period of long-term incentive is two years or less, due to a short business cycle, an explanation should be provided and there should be a sufficient subsequent holding period post vesting.

Many big companies will put their executive pay plans to a binding shareholder vote at agms this year under existing rules that require them to do so every three years. Soon after Theresa May became prime minister in July, she said there should be annual binding votes on executive pay, but in a consultation announced late last November indicated that ministers had rowed back from that stance. Business Secretary Greg Clark said he wanted ceos to be paid in line with performance: "The right thing is to give greater powers to shareholders to hold executives to account," he told the BBC then. The government does not plan to force companies to put workers' representatives on boards – a practice that is common in countries such as Germany.

Among other measures under consideration are pay ratios, which would show the gap in earnings between the ceo and an average employee.

One of the first companies due to put pay proposals to a binding shareholder vote would have been **Imperial Brands** at its agm on February 1. David Haines, chairman of the tobacco company's remuneration committee, was recommending a hike in the pay package of its ceo Alison Cooper, from £5.5m in the last financial year to a maximum £8.5m in the current year. A company spokesman said the proposed hike in pay reflected the committee's concerns about the company's ability to "retain and attract executive talent", adding that Cooper had achieved shareholder returns of more than 170 percent since she took the top job six years ago. After proxy agency ISS condemned the proposed pay hike, and other City institutions chimed in, Imperial Brands stepped back.

WORLD NEWSPAD

Sailing away with £8m in free shares……

DFDS Ferries has awarded its 7,000-plus employees free shares as a 150th anniversary gift. All who were employed by the company on December 1 last year and who had worked at least 24 hours a week will receive 30 shares each – currently valued at about £1,150 – as each share is worth c. £39. Employees on fewer hours were given a number of shares proportional to the hours they have worked.

The share awards were made in the form of a restricted stock unit plan, so that one DFDS share will be transferred to a participating employee in February 2020 depending on continued employment. The transfer will be made free of charge.

The plan is based on DFDS' sale of shares from its holding of treasury shares to the employees and thus no new shares will be issued in February 2020.

Bent Østergaard, chair of DFDS' board of directors said: "In recent years DFDS' performance has been considerably improved, not least due to the efforts of our dedicated employees. To recognise this effort and to strengthen the bond between DFDS and its employees, and as a fitting tribute to DFDS' 150 year anniversary, the board of directors has decided to award shares to all employees."

Niels Smedegaard, DFDS ceo, said: "Very few companies are in a position of being able to celebrate their 150th anniversary. We have therefore wanted to combine the celebration of our foundation and our founders with a celebration of, and thanks to, our many employees. Every day they help to ensure that DFDS can continue contributing to trade, travel and growth in the future."

The shares are tied up for a three-year period, after which they can be freely redeemed by the employees, who now become co-owners of the company. The total free share allocation to employees amounts to £7.9m.

DFDS operates up to 54 sailings a day between Dover and Calais and Dover and Dunkirk and has sailings between Newcastle and Amsterdam and Newhaven and Dieppe. The company is northern Europe's largest integrated shipping and logistics operator with a network of around 30 routes and 50 freight and passenger ships. It was formed in 1866 by the merger of Denmark's three biggest steamship lines. DFDS stands for The United Steamship Company in Danish.

Ireland

Another stock market flotation for **Eir** (formerly Eircom) and another big executive pay day looms. Company filings in Luxembourg show that senior executives and management are in line to receive payouts of up to €181m collectively for their shares in the company when it returns to the stock market, possibly next year. "It's a lot of money for a management team but reflects the fact that they own around 15 percent of the company and the size of the payout will depend on the value placed on Eir by the market when it does begin trading again on the market," said the *Irish Independent.* This is part of a long-standing tradition at the former state telco, where executives land superbly generous share and/ or bonus payments whenever it floats. This will be its third IPO.

Back in 1999, then ceo Alfie Kane wasn't allowed any shares in the business ahead of its privatisation. Instead, it emerged after the flotation that he and his then fd shared bonuses totalling €1.2m. By 2003 Eircom had new owners and a new management team led by ceo Phil Nolan. The company was smaller, but the rewards were even bigger. Nolan received a signing-on bonus and shares worth €2m when he took up the job in 2001 and in 2003, four senior executives shared €11.5m in bonuses for re-financing the company's sizeable debt. They then bagged multi-million euro share option packages when Eircom floated in 2004. A decade later, Eircom ceo Herb Hribar received the bulk of a €9.8m termination payment given to departing executives when plans for an IPO were shelved. The company spent €14m buying shares in a bonus scheme from exiting management. Some Eir executives in the management team, which is led by ceo Richard Moat, could have benefited from a liquidity event in 2015 when the company purchased some management shares, worth €56m, using cash or other classes of shares depending on their personal preference.

"There is a definite pattern and it seems to say that landing a top job at Eir is better than winning the lottery. If you re-finance its massive debt, you get a bonus. If it floats, you get a bonus. If it doesn't float, you get a bonus. If your contract is terminated, you get a big cheque then too," said the newspaper.

"In fairness to Moat and his team, they have handled the post-examinership turnaround at Eir extremely well and have put the company on a much more solid footing. They landed their shareholding in the company at a time when the outlook for the telco was not nearly as bright." Many moons ago, it was the staff who gained enormously from the Eircom

corporate adventure, but their hugely valuable Esop was abolished years ago when the company was in financial difficulty.

Germany: Dieselgate & toxic mortgages

Big bonus and pension deals for top executives at **Volkswagen (VW)** and **Deutsche Bank** – two flagship companies fighting troubles of their own making – have been widely criticized in Germany. Now, the compensation controversies are threatening to become an election-year issue, as the minority Social Democrats seek to chart a path back into the Chancellery, reported *Handelsblatt*. SPD leader Sigmar Gabriel, Chancellor Angela Merkel's deputy, seized on the issue: "We have to demonstrate clearly that we can set limits to greed," he told the *Frankfurter Allgemeine Zeitung*. Mr Gabriel wants new legal limits on boardroom pay in Germany, but even if the SPD doesn't push through legislation before September's national election, the issue could shape Ms Merkel's bid for a fourth term. Compensation levels for private-sector executives in Germany have trailed the UK and the US, although with share-based awards growing, the gap has narrowed.

Before he left VW, ceo Martin Winterkorn was Germany's highest-paid corporate executive, earning about €15.7m in 2013, according to *Bloomberg*. By contrast, Martin Sorrell, the ceo of global advertising giant **WPP**, earned more than twice that in the same year – £29.8m. Lloyd Blankfein, ceo of **Goldman Sachs**, earned $24m in 2013, according to *The Wall Street Journal*. Mr Winterkorn, who resigned from VW in the wake of the Dieselgate scandal in 2015, is eligible for an annual company pension of €1.1m. He has denied advance knowledge of the software emissions fraud that has so far cost VW more than €15bn in fines and compensation. Winterkorn's '€3,000 a day' pension drew criticism from politicians of all parties. The centre-right CDU parliamentary leader Volker Kauder said the payments were problematic, given the recent announcement of 23,000 job losses at VW. "This is not a good example to set for this country's way of life," he said. Reiner Hoffmann, head of the DGB trade union congress, was more combative: "While we are fighting for a decent pension for all, companies are shelling out millions for managers. That does not add up."

*This case is linked to that of Josef Ackermann, former ceo of **Deutsche Bank**. The bank has demanded repayment of millions in bonuses, saying that poor decisions made on Mr. Ackermann's watch contributed to the bank's current woes. Ackermann has so far held on to the money, in spite of widespread public criticism, including from Germany's finance minister Wolfgang Schäuble. More than 20,000 Deutsche Bank staff have been told via an internal memo that their bonuses this year will be drastically reduced in the wake of its $7.2bn payment of fines to US regulators over the mis-selling of toxic mortgage-backed debt before the financial crisis. Cutting bonuses will cause pain for London-based staff of Deutsche. A 'limited number' of employees in crucial positions will receive a special long-term incentive, partly in stock, that will be deferred for as long as six years, according to the memo.

Currently, banking is the only industry whose bonus awards are publicly regulated. Top managers and traders at banks within the EU can receive a maximum bonus of twice their basic salary. European law does not limit bonuses in any other economic sector. New EU guidelines for shareholders are being drawn up in Brussels, demanding that managers' pay levels must be made public. Although this is not mandatory in Germany, almost all large German companies voluntarily disclose the salaries received by senior executives. The **European Commission** had wanted to make it mandatory for executive pay to be approved by shareholder vote at company agms. But it failed to have the proposal accepted into the new guidelines, agreed shortly before Christmas. These grant only an advisory vote to shareholders. The guidelines, expected to come into force in March, include a suggestion that bonuses and other variable remuneration should be linked to long-term corporate performance. While this hints at possible retrospective repayments by managers, the rules make no explicit provision for this.

VW investors demanded reforms and questioned executive bonuses after it admitted criminal offences in rigging US emissions tests. US prosecutors indicted six current and former managers over the scandal. VW agreed to pay $4.3bn in civil and criminal fines in a settlement with the Department of Justice (DoJ), the largest ever US penalty levied on an automaker. VW admitted that 40 employees of its VW and Audi brands deleted thousands of documents in an effort to hide from US authorities the systematic use of so-called defeat devices to rig diesel emissions tests, a scale of wrongdoing that led some investors to call for deep reforms. "For senior management to receive any bonuses in 2017, we would now expect VW to deliver a dramatic improvement in profits," said Ben Walker, partner at activist hedge fund **TCI**, which last year criticized "corporate excess on an epic scale" at the carmaker. VW still faces lawsuits from about 20 US states and investors, and will spend years buying back or fixing 580,000 polluting US vehicles. It faces claims from investors and customers in Europe and Asia too, after admitting in September 2015 that up to 11m vehicles worldwide could have defeat device software installed.

"What is most disturbing ... is the pattern of deception, both in developing and perfecting the defeat devices, as well as deliberately obstructing the subsequent investigation," said Annie Bersagel,

an adviser for responsible investments at Norwegian Mutual Insurance company KLP. "We would like to see a claw-back provision relating to violations."

For 2015, the year the scandal was uncovered, VW agreed to pay 12 current and former members of the management board a total of €63.2m in fixed and flexible remuneration. It said board members would have 30 percent of their variable bonus withheld if the share price remained below €140. Six current and former VW managers have been indicted, including Heinz-Jakob Neusser, former head of development for the VW brand.

UK/Swiss Confederation Taxation Co-operation Agreement:

The UK/Swiss Confederation Taxation Co-operation Agreement ended on December 31 2016. The UK and Switzerland have signed up to the OECD's Common Reporting Standard. Switzerland will collect data to send to HMRC about UK taxpayers. See http://deloi.tt/2hVLFVu

US plan participation rates rise

Participation and deferral rates in Defined Contribution Profit Sharing and 401(k) Plans posted steady increases in the most recent annual survey published by the **Plan Sponsor Council of America (PSCA)**, a leading independent educational source on employee benefit and qualified retirement plans. Respondents reported that almost 90 percent of US employees were eligible to participate in their employer's defined contribution (DC) plan. "Company sponsored retirement plans continue to grow participation and deferral rates," said Hattie Greenan, director of research and communications. "By designing plans that include features such as automatic enrolment and options such as target date funds and Roth 401(k), plan sponsors are helping to advance the interests of all participants and grow America's retirement savings." The average percentage of eligible employees who have a balance in their plan is almost 88 percent and 82 percent made contributions to their plan in 2015. This is up five percent compared to 2010. The average salary deferral (pre-and after-tax) for all eligible participants was 6.8 percent. Lower paid participants contributed an average of 5.5 percent of pre-tax pay, while higher-paid participants averaged seven percent.

The average company contribution to 401(k) plans is 3.8 percent, and the average contribution in combination 401(k)/profit sharing plans is 5.4 percent.

The survey revealed that 67 percent of companies retain an independent investment advisor. Of those, 59 percent pay a fixed fee and 35 percent pay a percent of plan assets. The majority of plan expenses are paid by the company with the exception of recordkeeping and investment consultant fees.

Plans offer an average of 19 funds – to spread the risk – a number that has remained steady for five years. The funds most commonly offered are indexed domestic equity funds (79 percent of plans), actively managed domestic equity funds (78 percent of plans), actively managed domestic bond funds (75 percent of plans), and actively managed international equity funds (73.4 percent of plans). Assets are most frequently invested in actively managed domestic equity funds (21.4 percent of assets), target date funds (20 percent), indexed domestic equity funds (12.4 percent), stable value funds (eight percent), and balance funds (6.5 percent). The average allocation to target -date funds, which are offered by 63 percent of plans, is up from only four percent ten years ago.

US (2) Any-one working for or advising a public company should know the insider-trading rules, said **myStockOptions.com.** Even if you unintentionally violate the laws of insider trading, you can face a serious punishment. For example, you might casually tell a relative or a friend (or even pillow talk) about pending important company news and then he/she uses that information to make a stock-trading profit. Although the tipoff would probably be a violation of your company's confidentiality rules, you might not have had greedy intentions or not have expected anything in return from the tipped-off person and therefore might (wrongly) not view this act as insider trading. The **US Supreme Court** issued a major decision on insider trading involving just that type of situation. In its ruling on *Salman v. United States*, the Court made it very clear that whenever a friend or relative is tipped off, insider trading has occurred, regardless of whether the tipster receives a benefit. Prosecutors do not need to show something of value was received for providing valuable information. In the court's view, "the tipper personally benefits because giving a gift of trading information to a trading relative is the same thing as trading by the tipper followed by a gift of the proceeds." The tipper does not need to receive something of a "pecuniary or similarly valuable nature" in exchange for this gift to a trading relative. The ruling is seen as a victory for the US government, as it strengthens the position of federal prosecutors and their desire to bring insider-trading cases.

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