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it's our business

newspad of the Employee Share Ownership Centre

Employee equity values slashed in pandemic job cuts

Thousands of UK employee shareholders face not only redundancy, but substantial losses in the value of their equity portfolios too which, in many cases, they will be forced to sell into lower priced share markets.

Mass pandemic induced redundancies are being announced by UK companies which operate successful employee share schemes, including: US based consultancy *Accenture,* which runs an employee stock purchase plan for its 10,000 UK employees; *Airbus*, for which employees still subscribed almost one million shares in May under its Share Incentive Plan (SIP) with matching free shares; *BP*, *Centrica* (the owner of British Gas), *easyJet, Marks & Spencer, Rolls Royce* and builders merchant *Travis Perkins*. Even employee *owned* companies were not spared either, as engineering consultancy *Arup* announced 350 departures from its UK arm.

Many employee share scheme participants, who face redundancy, or the threat of it, in the months ahead, will be wondering whether they can keep their shares or share options after they leave their employment, or whether they will be forced to cash in the now reduced value of their equity holdings when they leave.

It all depends upon what is written in their employee share ownership scheme contracts, which are normally quite separate from their employment contracts. In some cases, especially in control-conscious SMEs, those contracts and/or the company's Articles of Association clearly state that leavers must cash in their holdings by returning their employee shares to the company. In addition, the rules of certain approved share schemes, notably, the Share Incentive Plan (SIP) require holdings subject to the three year holding period to be surrendered.

In February, before the lockdown, the shares of Rolls Royce, which plans to cut 3,000 UK jobs, were steaming ahead at just under 700p each, before collapsing to the much lower range of 240-255p per share - little more than a third of the value - by late August. So employee shareholders forced to cash in their SIP shares now would get just one third of the value they would have got, had they sold them in February. *Marks & Spencer* employee shareholders facing redundancy will rue the fact that since January, the share price has almost halved from 218p to just 110p.

Jennifer Rudman, industry director, employee share plans at centre member **EQ**, said that the **Centre** had identified an important issue. She said: "*So far, the furlough scheme has enabled many employees to continue their participation in the two UK contributory tax advantaged plans (SIP and Sharesave), with employees hoping share prices will recover in the future.*

"*Faced with an increase in redundancies, there will be an impact and an increase in the number of*

From the chairman

Newspad editor Fred Hackworth gave BBC listeners the background this week to the long-suffering employees of Roadchef who have now been waiting years for any sign of compensation. The battle has dragged on between the Treasury, the trustee and Her Majesty's Customs and Excise. All honourable men and none want to drop the parcel. It was an implicit appeal to all parties involved. There's a lot to be said for employee ownership; while the Roadchef employees hang out to dry there is a lot to be said against it too. The time has come for generous gestures from all involved by which I mean all who have profited in any way.

On a bright and personal note I was delighted to learn that City shipbrokers E.A.Gibson had become debt free following an employee buy out in 2015. A final payment was made last month to Hunting plc. Gibson takes the view its job is to get things done, not ponder over what can't be done. Over the next fortnight all employees in London, Singapore, Hong Kong and Houston will receive a bottle of champagne. My son will be one happy recipient.

Malcolm Hurlston CBE

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leavers from these plans. Plan rules adhere to legislation, with redundancy regarded as a 'good' leaver reason, meaning for Sharesave that the option can be exercised early (if there is still a gain to be made) or savings can be withdrawn. For SIP, all plan shares, including any that are still subject to the three year holding period, become available to participants free of tax and must be withdrawn from the plan. This, at least, can still provide some value to their participation in share plans.

"*With a six-month period for exercising Sharesave options, and a choice of when to sell SIP shares, participants will have to consider very carefully what they should do and in what timeframe,"* added Jennifer.

Increasingly, voices are being raised, saying that employees should be allowed to keep their company shares or options, *if they want to*, if they were being made redundant, said share schemes expert David Craddock. This is relevant in the SME sector if the company has been working towards a trade sale because, if participating employees are made redundant before the sale, then they won't get the uplifted value from their shares or options which they would have done from a sale, perhaps a year or two, he added.

In the quoted sector, the FTSE100 share index was still*, at the time of writing*, 20 percent below its peak of 7674 last January. True, the US S&P500 index hit a record high a fortnight ago, but the *overall* value of the S&P is distorted by the stellar stock performances in the 'super-techs'- Amazon, Apple, Facebook, Google-parent Alphabet, Microsoft, and Netflix, which are collectively worth c $9trillion. More than half of other quoted company share prices are still well down on where they were last January, due to the pandemic. Anyway, companies making mass job cuts *a priori* are struggling and their share prices are well down on pre-pandemic levels. *Furthermore, redundant employee participants in SAYE-Sharesave schemes may have no gains to look forward to, if their share options, perhaps awarded 18 months ago, are still underwater.*

Malcolm Hurlston CBE, chairman of the Centre, said: "Whatever the contractual wording about the surrender of employee shares or options on redundancy, employers should think seriously about doing the right thing for their departing employees.

"This is an unprecedented situation in which thousands of employees face being thrown out of work, due to the pandemic, without any gains to show for their share scheme involvement. They should be given the choice either to retrieve some cash now, as in the case of SIP, or hold on to their investment until at least the date of the maturity of the scheme in which they are participating. That surely is best practice and socially just."

Major job cuts announcements included: 7,000 redundancies at *Marks & Spencer,* mainly female store employees and regional management, over the next three months; 2,000 UK jobs to go at *BP*; c. 4,000 planned redundancies at *Boots*; almost 700 job cuts at *Harrods* and 2,500 job cuts to come at *Debenhams Group* stores and warehouses, which went into administration, being managed by *Hilco Capital*, the winding up specialists. About 5,000 job roles are to go at *Centrica;* 3,000 at *Rolls Royce UK;* 2,500 at *Travis Perkins;* up to 3000 at *Upper Crust* owner SSP Group; up to 12,000 jobs at *British Airways*; 3,000 at *Virgin Atlantic;* 1,200 redundancies at *Azzurri Group* (*Zizzi and Ask)* after a takeover by *TowerBrook Capital Partners,* which saved c.225 of *Azzurri'*s restaurants and shops*;* 1,100 jobs as 73 outlets close at *Pizza Express* and 600 employees going at shirt-maker *TM Lewin*; 1,000 jobs lost at *Pret A Manger*; 950 at *Marks & Spencer*; 450 at *Selfridges;* 1,700 UK jobs at plane-maker *Airbus*, Up to 1,000 to go at luxury car maker *Bentley*; 1,800 jobs at car dealer *Pendragon* and 1,500 more at rival dealer *Lookers*; 900 at *Clarks (footwear);* 878 jobs going out of the 4,500 workforce at *Hays Travel*;.800 store managers at *Dixons Carphone;* 1,300 crew and 727 pilots at *easyJet (where pilots are being offered seasonal contracts, paid only for six months of the year) ;* 600 UK jobs at *Dyson*; up to 900 UK job cuts at *Accenture*; 550 jobs at *Daily Mirror* publisher, *Reach*

At least 1,000 staff at *Edwardian Hotels* face losing their jobs. Employees were told to agree to new contracts which could mean a 50 percent cut in hours. In addition**,** *WH Smith* was considering cutting 1,500 jobs, mostly at its travel sites, equivalent to 11 percent of its workforce. Although currency exchange firm *Travelex* stayed afloat by means of a pre-pack administration deal, saving 1,800 UK jobs, around 1,300 other Travelex UK jobs were being axed. Parts of the business were bought by a newly created company controlled by its lenders. Similarly, billionaire businessman Mike Ashley's *Fraser Group* bought 46 leisure clubs and 31 retail outlets from his rival and long-time critic Dave Whelan after DW Sports Fitness fell into administration. Some 922 jobs out of a total of 1,700 across the business will be saved.

By contrast, *Heathrow Airport* said that it was talking to its unions about imposing pay cuts of between 15 and 20 percent on its 7,000 workforce, as an alternative to mass redundancies. Proposed new employment contracts could scrap a planned pay rise and end the staff final salary pension scheme.

On the other hand, job *vacancies* were piling up for supermarket staff, delivery drivers, warehouse employees, cleaners, nurses and security staff. *Tesco* is permanently hiring 16,000 extra staff taken on during the pandemic to help support a surge in online grocery trade. The roles include 10,000 pickers, who select and pack grocery orders for home delivery and 3,000 drivers, as well as other jobs in stores and distribution centres. Tesco said it had already hired 4,000 other permanent staff since the start of the pandemic. Private equity group *Epiris* bought the *Casual Dining Group* out of administration, protecting more than 4,000 threatened jobs and more than 150 restaurants. *CDG*'s brands *Las Iguanas, Bella Italia* and *Café Rouge* are now part of the new business. *Capita* announced that it was recruiting 900 extra staff to monitor the new London congestion charge and enhanced exhaust emissions equipment, to deter the most polluting vehicles from entering the capital. *Amazon* was recruiting 1,000 new staff for its new Nottinghamshire hub.

*Centre member **The Rm2 Partnership** corporate finance division is *recruiting* new staff for its rapidly expanding business in Employee Ownership Trusts (EOT). Nigel Mason told *newspad:* "We are excited about the potential for EOT. Despite the economic challenges posed by Covid-19, we are seeing record numbers of enquiries from business owners wanting to explore this innovative and flexible exit route.

*Five times more companies notified the government in June about plans to cut 20 or more jobs than in the same month last year, revealed statistics obtained by the BBC. A *Freedom of Information* request showed that in June 1,778 firms said were intending to cut more than 139,000 jobs in GB. In the same month last year, only 345 firms gave warning of their plans to cut 24,000 jobs. Companies planning to make 20 or more staff redundant have to notify the government by filing an *HR1 Advance Notice of Redundancy,* which includes a consultation period of a minimum of 30 days for 20+ staff cuts and 45 days for 100 or more staff, *which is why most planned job cuts have not yet shown up in the unemployment figures.* One third of UK employers expect to cut jobs by October, according to a survey that suggests that the economic impact of the pandemic will accelerate in the coming weeks. Latest quarterly unemployment statistics revealed the claimant count had more than doubled to 2.7m, compared to its pre-pandemic level and that a further 720,000 people no longer had paid work. Better news for the employee equity sector was that 253,000 contractors left the ranks of the self-employed and returned to company payrolls between April and July this year, according to the Office for National Statistics. Freelancers began looking for employed status jobs after contracts were cancelled and learning that the government will go ahead with changes to the IR35 tax regime next year.

EVENTS

Last orders for Jersey: September 25

The Centre's Jersey share schemes and trustees seminar, held in partnership with the Society of Trust & Estate Practitioners (STEP-Jersey branch), will take place on **Friday September 25**. Rt Hon. Mark Field, who was a strong supporter of the Crown Dependencies when a Treasury minister, will be guest of honour.

Trustees and others should book their seats now, given the uncertainties engendered by the impact of the pandemic on economic activity, the hiatus in Brexit negotiations, corporate governance moves, the international reach of trustees and the growth in employee ownership trusts. Those interested in employee share ownership schemes and trusteeship need to be updated by this annual seminar.

The programme includes sessions on the Eso response to Covid; Recent decisions of the courts, and issues arising with EOTs; "*A day in the life of a tax inspector*" - looking at the knock-on effect of the pandemic for those working at HMRC; plus updates on the loan charge, and Esops.

Expert speakers include: Katherine Neal, Ogier; Graham Muir, CMS; David Pett, Temple Tax Chambers; David Craddock, David Craddock Consultancy Services and Paul Malin, Haines Watt. The extended half-day event will be chaired by Centre founder and chairman, Malcolm Hurlston CBE. The seminar concludes with a lunch for delegates and speakers.

Book your seat(s) now. ***Delegate prices***: Esop Centre/STEP members: **£375**, Non-members: £480. To reserve your place, email juliet_wigzell@zyen.com or call the Centre on +44 (0)20 7562 0586.

British Isles share plan symposium – March 24

The Centre's fourth annual share plans symposium and *newspad* awards presentation will take place on the revised date of **Wednesday, March 24, 2021** at a Central London location. Delegates from share plan issuer companies are welcome to attend FREE OF CHARGE. The revised programme and speaker list is posted on the Centre website www.esopcentre.com for the original event, postponed owing to Covid-19, with topic slots updated. A key programme segment covers executive remuneration, post pandemic. The presentations will be delivered by leading practitioners in their respective fields of expertise.

Our thanks to **Ocorian,** the independent Channel Islands based provider of corporate and fiduciary services, for co-sponsoring the symposium, which offers attendees latest guidance on installing and operating employee equity schemes for companies of all sizes.

Speakers wishing to update their presentations should inform Fred Hackworth at:fred_hackworth@zyen.com For all other enquiries about this event, contact Juliet at juliet_wigzell@zyen.com or call +44 (0)20 7562 0586. Admission prices will remain as advertised – **£395** + VAT for delegates from member practitioners and **£595** for non member practitioner delegates.

WEBINARS

Could equity be used to replace a portion of an employee's salary? September 3, 16:00BST.

Given the current economic outlook due to the Covid -19 pandemic, companies will be concerned with maintaining cash flow and cutting costs wherever possible. Our panel of White & Case experts from France, Germany, the UK and the US will discuss whether it would be possible, and advisable, to replace a portion of an employee's salary with equity grants, and the related employment, securities and tax law considerations for doing so.

Employment related securities: the complexity unravelled into practical application. September 17 12:00BST.

This term employment related security generally relates to shares of your company but also includes debt, derivatives and interests in investment partnerships. Tax and NIC may be payable where the right or opportunity to acquire the securities (or an interest in securities) is made available by your company (or by a person connected with your company) to a director or an employee by reason of the employment of the person acquiring the securities (or interest). Any company with tax-approved share plans must register these arrangements online and file returns. In this webinar, share schemes expert David Craddock will guide you through the twists and turns of ERS.

Esop Sofa: hot topics discussion. September 28 16:00BST. Darren Smith of YBS Share Plans will lead a discussion with invited guests on employee share scheme issues of the day.

Webinar reports

A recent episode of the Centre's popular ***Esop sofa lockdown stories*** addressed the theme of ***Adapting to business life during the pandemic***. The webinar was delivered by **Kevin Lim**, business development manager at Centre member **Investec** and his guest, **Laura McNeil,** assistant company secretary of AIM-listed **Blue Prism,** which develops robotic process automation software, to create digital workforces, from its Warrington HQ. They were introduced to the virtual audience by **Ian Harris,** director of **Z/ Yen Group,** which operates the Esop Centre. Kicking off, Ian said he'd been home working for 25 years, but still needed meetings to "ward off cabin fever." Employee share ownership gave a holistic approach to work, where companies which had embraced Eso had a psychological and sociological edge over traditional work hierarchies. Kevin joked that he had locked his family in the basement of their home for the duration of the webinar, but worried whether the dog would still manage to intervene….He asked Laura to explain the detail of Blue Prism's fully automated share plan, which operationally saved a lot of human time. Now a digital bot did all the spade work, said Kevin, who works closely with Laura on plan administration. Free shares were offered to c.1,000 employees in 17 countries every January.

Laura said that she had already been operating partly from home before her offices were shut just before lockdown. She and her colleagues had had to do a lot more problem solving due to the pandemic – for example squeezing in Blue Prism's agm before lockdown, with the help of a webinar to give investors the chance to dial in with their questions, or dealing with countries who still required *'wet signatures'* on employee share transactions, despite the pandemic: "We really struggled with this, needing access to their computers and we had to get couriers to deliver key signed documents," said Laura.

Kevin said that at Investec, from having 1,500 people in two buildings, suddenly, due to lockdown, they had just 30 staff going into their offices to carry out key tasks, such as custody of share certificates. Looking ahead, Laura said that a lot of companies would have redundancy issues and they would have a knock-on effect for share plans.

She said some companies now viewed share plans as an expensive luxury, while others saw them as a strategic asset. "The only constant is change," added Laura.

Kevin said that some pharma/medical and power storage groups had been going great guns during the pandemic, were stuffed with cash and putting in new share plans. "We've come across quite a lot of companies funding their trusts to acquire their shares at cheaper prices, so that they could award shares in the future," added Kevin.

Oil and gas upstream companies had kicked a lot of share plan arrangements into the long grass. They had not terminated their share plans, but were waiting one or two more quarters on before reinstating them. In retail, obviously only a few companies were carrying on with their normal cycles of employee share awards.

On executive remuneration, his colleagues had only come across one case to date where a company had reduced its directors' salaries and had substituted share grants.

However, some companies were worried about the potential quantum in their executive equity awards, against the background of lower share prices and so were putting a lot more minimum share holding periods into such schemes, added Kevin.

Unfit for purpose: What has gone wrong with our pension system and how will we fix it? This **Centre/FS Club** webinar was delivered by ***David Pitt-Watson,** former Pembroke Professor of Finance at Cambridge, where he remains a Fellow.

David told his webinar audience that he hoped that the new Pension Schemes Bill, which would establish collective defined contribution pensions in the UK, would become law by Christmas. Collective defined contributions (CDC) are a type of pension that allows employees an option of paying into one giant pot with other people from any company they have a pension with. This collective pot is then invested in a way designed to provide everyone with an income from the time they retire until the time they die, dependent on how much they have saved. At present, employees can only save into an individual pension pot and are then left to fend for themselves, not knowing how long they will need their pension savings before death. The only current alternative to this is to buy an annuity which is very expensive. CDC pensions offer that guarantee. They can make longer term investments and offer economies of scale, ie pooling the pensions of employees across and between large companies help keep costs low. As a result, they offer much higher pensions than are available by buying annuity, said David: "*We need pension schemes which are more fit for purpose. In a defined contributions pension scheme, you are given a cheque when you retire, but today pensions don't provide a retirement income. How have we got into this situation?"* The old system of private pension provision was based on defined benefits, with retirees getting up to 80 percent of their final year salaries, but gradually they became unaffordable because companies had to plough in increasing sums from their reserves to keep them properly funded. Pension contribution holidays took the pressure off funding requirements. Next, we had promoted the direct contributions system, which led to money purchase pensions, but the fatal flaw with that was that buying annuities became too expensive. "*There has been no proper system of pension payment and it is an excellent example of how an industry can lose its sense of purpose,"* he said.

Pension costs were controversial; on top of annual fund management fees, there were typically extra charges for transactions within the fund portfolio and custodial fees. So a two percent annual deduction from pension funds was not unusual. During perhaps 25 years of pension saving, that knocked a huge slice off the final size of the fund.

Although technology had transformed the financial services industry, the cost of providing those services, including employee pensions, had not declined, according to statistics he provided: "You would have expected a dramatic increase in productivity, but it hasn't happened," said *Prof Pitt-Watson, who is a leading investor and campaigner; founder of Hermes responsible investment activity, Chair of the UN Environment's Finance Initiative for the Paris Conference, non-executive director at KPMG and a campaigner, advisor and board member to governments, companies, and NGOs. David's background note was published on the RSA website, 2020 Pension Schemes Bill: Establishing Collective Defined Contribution Pensions In The UK.

Getting back its mojo? Uncertain times for UK financial services

The UK would have the opportunity to develop a more responsive regulatory regime once Brexit had been 'done,' said ***Mick McAteer,** founder and co-director of The Financial Inclusion Centre, a UK not-for-profit policy and research group (www.inclusioncentre.org.uk), which promotes financial markets that work for society. However, the pandemic meant not only horrific unemployment numbers, but a scenario in which millions of people would find it very hard indeed to obtain affordable credit. "*We need a bridging scheme which will help those people and we will have to share the financial burden of setting it up between government, lenders and households,*" he told his virtual audience.

On Universal Service Obligation (USO), the UK had made almost no progress, except on basic access to bank accounts, and even then, one million people still had no access to a bank account, said Mick. Equally alarmingly, 7.5m British households were without basic household insurance – a scandal which demanded a USO, which would cover critical financial products. Ordinary citizens were being excluded from the financial system and the City of London had lost a lot of relevance for them, so new forms of long-term investment funds, centred on rebuilding the economy, should be created to help them, he added. People said that the pandemic was accelerating the move towards a cashless society, but there was '*no question'* that cash would remain incredibly important for a sizeable minority of households. There had been £70bn worth of financial product miss-selling and although compensation had been paid, there was still a legacy of mistrust among ordinary people: "*The world of financial services must get its Mojo back – it must demonstrate that it is trustworthy*," said Mr McAteer, chair of Registry Trust and deputy chair of the General Consumer Council of Northern Ireland.

Sensible investment provided value for pensions etc, but a lot of pre-pandemic gains had been derived from rising share markets, not from financial practitioners' skills. The basic challenge was to create financial products more relevant to *Bigger Society. "Currently, FS is too mixed up in arcane financial products created in Canary Wharf and it has signally failed to provide reasonably priced products to the many excluded households."* The state would be borrowing the maximum to fund the post Covid Brexit world, so it was almost inevitable that the state would play a bigger role in economic life because there was no other option, he added. *Mick has served on the boards of: the Financial Conduct Authority (FCA)/ Financial Services Authority (FSA); the Financial Reporting Council's (FRC) professional oversight. At *Which?*, he helped expose major scandals such as pensions, mortgage endowment and PPI mis-selling, and worked on reform of pensions, insurance and banking industries.

The case for employee share ownership

Employees are more inclined to develop capital value in their companies if they have a stake in that capital value themselves. This simple proposition was at the heart of the case for all-employee share ownership, **David Craddock,** founder and director of **David Craddock Consultancy Services,** told a Centre webinar, chaired by **Ian Harris**, director of **Z/Yen**. For employers possibly worried about giving employees a share in the equity, he posed a simple question: *was it better to own 100 percent of a company worth* £*500,000, or own 75 percent of a company worth* £5m? For employee share ownership was integral to business growth, said David. Expertise in Eso was difficult because it was a multi-disciplinary subject – covering securities and financial services laws, tax and employment laws, data protection, employee benefit trusts and others. All-employee share ownership was compulsory in only one country – South Africa – as part of its black empowerment programme, he said. So as employee participation in Eso schemes was voluntary elsewhere, the communications strategy was crucial, together with top quality administration. The key messages to get across to employers and employees about Eso were those of motivation, incentives, identity of interest (*we're all in this together)* and loyalty, or job retention. Employee shareholders were receiving the *wages of capital* in the form of dividends and capital gains on the value of their shares. Eso helped employees to think like entrepreneurs and not clock-watchers. On a higher level, participation in Eso schemes helped humans realise their potential, said David. For Eso was the fuel which drove the car – it appealed to natural human interest. In the UK, the Coalition government of 2010-15 had proved the golden era for employee share schemes, a time when the new vehicle, the Employee Ownership Trust (EOT) had come into being, but in the US, employee share ownership was entrenched to a much greater extent. He cited one Nasdaq quoted electronics company in which the employees owned 65 percent of its shares! In the US too, there was a desire to involve supplier companies in share schemes.

During the pandemic, companies could make greater use of Eso, because a far greater proportion of the workforce worked from home, instead of being in one office together. So companies could use Eso as a unifying force – something to offset potential isolation, he added.

Share valuation: the wisdom on price setting for your Eso schemes

This shares valuation webinar too was presented by employee share schemes expert, **David Craddock.** Getting shares valued was a key step in the design and implementation of an employee share scheme for an unquoted company, he said**.** The basis of valuation of any assets, including shares, was established by statute in section 272(1) TCGA 1992 as: "*the price which those assets might reasonably be expected to fetch on a sale in the open market"* Section 272(1) represented, therefore, this was the definition of Market Value that was applied for tax purposes, said David. UK tax or fiscal valuations were subject to special rules which had evolved over time through a combination of case law and legislation. Whether a valuation *was* acceptable for tax purposes was ultimately a matter for HMRC's Shares & Assets Valuation Office, which reviewed and agreed on share valuations for the tax-advantaged employee share schemes.

However, the valuation world had been unsettled by HMRC, which had withdrawn its facility to offer post-transaction valuation checks and PAYE health checks for valuation. So it was vital, said David, that SME share valuations were rigorous in order to ensure that they were credible and capable of a robust defence if subsequently challenged by HMRC. Implicitly, it made good sense for unquoted companies who needed to establish the value of their shares to bring in a valuation expert to help prevent them making an expensive mistake. For valuing the shares of SMEs, the legal requirement was that: "*There is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if he/she were proposing to purchase it from a willing vendor by private treaty and at arm's length"*.

There was leading valuation *case* law to consider too, especially in complex areas, such as hypothetical transactions and the value assessment at that time (*the photo snapshot*), without hindsight. The amount of information that had to be given top HMRC and others about the valuation depended upon both the voting rights and the value of the shares concerned. If the percentage of available equity to be valued exceeded 50 percent (*giving the owner capacity to block ordinary resolutions)* then clearly a lot more information had to be given than was the case if only (say) 15 percent of the equity was offered for valuation and sale. It was irrelevant whether or not an exit was envisaged, said David.

The valuation basis for SME companies comprised: net earnings; net assets; trading and dividend – and whichever of these produced the highest value would determine the valuation of the shares. He discussed key valuation influencers, such as the price-earnings multiple, discounts, the bid premium, the pre-eminence of the true trading basis, the arms length principle of funding and so on. *David Craddock is an expert share valuation consultant, as well as technical secretary to the share valuation Worked Examples Group (WEG), which is administered by the Esop Centre.

MOVERS AND SHAKERS

On the move

Charlie Germain was appointed client director at Centre member **Intertrust Group.**

Centre friend **Mike Kemsley**, who is a non-executive director at the **British Board of Agrement (BBA),** told *newspad* that he is encouraging his board to restructure (*as BBA is currently limited by guarantee)* in order to set up an **Employee Ownership Trust (EOT)**. His son **Alex** works for the **Z/Yen Group**, which runs the Esop Centre.

Railway buff **David Pett** celebrated his third anniversary as a specialist barrister at Temple Tax Chambers, advising on tax, remuneration and employee share schemes. One wit posted: "*Congratulations, David – the future is steam*!" His new book on "*Disguised remuneration and the loan charge*" is due to be published this month – see https://www.claritaxbooks.com/forthcoming-titles/.

A review of David's book will be published in the October issue of *newspad,* as the disguised remuneration saga is of considerable interest to many practitioner members.

Sharon Sargent started her new job as senior share plans manager at *Flutter Entertainment plc*

Sir Geoffrey Vos was appointed **Master of the Rolls** from January 11 next year, to follow the retirement of Sir Terence Etherton. The Master of the Rolls is the second most senior judge in England and Wales, after the Lord Chief Justice. As president of the Court of Appeal's civil division, he/she organises the judges' work for the division as well as presiding in its courts, hearing the most complex cases across the range of civil, family and tribunal matters. Sir Geoffrey was appointed a Justice of the High Court, assigned to the Chancery Division in October 2009. From 2005–2009 he was a Judge of the Courts of Appeal of *Jersey* and *Guernsey*, and a Judge of the Court of Appeal of the Cayman Islands between 2008 and 2009. He became a Lord Justice of Appeal in 2013 and Chancellor of the High Court in October 2016. The Master of the Rolls is head of civil justice, with responsibility for the development and oversight of the wider civil justice system. Reflecting the role's historic roots and the importance of public access to records and data for the rule of law, the Master of the Rolls is chair of the Advisory Council on National Records and Archives.

***Sir Keith John Lindblom** was appointed **Senior President of Tribunals** from September 19, 2020, to follow the retirement of Sir Ernest Ryder. Sir Keith will head up the unified tribunals system and the employment tribunals and the Employment Appeal Tribunal. The Senior President leads those within the First-tier and Upper Tribunals (*which deal with tax cases of interest to the Esop Centre)*, and the Employment and Employment appeal tribunals; including the presidents and their tribunal judges and members. Sir Keith was appointed a deputy High Court judge in 2009 and in January 2013 he was appointed president of the Upper Tribunal Lands Chamber. In November 2015 he was appointed a judge of the Court of Appeal, where he is the supervising Lord Justice for Planning. He became Vice-Senior President of Tribunals in March 2018.

*Reminder: The email address of *newspad* editor **Fred Hackworth**, for all Centre communications, has changed to: fred_hackworth@zyen.com (*note the underscore)***.** Marketing departments should be aware that his former *..@hurlstons.com* e-address is **no longer in use**. Members who regularly send employee share scheme bulletins and other news of their personnel and business activities should use his new e-coordinate when sending contributions/ information for publication in one of our monthly editions of *newspad.* Queries about future UK share plans conferences should be made to him at the new e-address.

UK CORNER

Discretionary employee stock award for sex, claim

The former ceo of fast-food goliath **McDonalds,** Stephen Easterbrook, is accused of having awarded restricted stock units worth "hundreds of thousands" of dollars to a female employee with whom allegedly he had started a sexual relationship.

McDonalds filed papers with the US Securities & Exchange Commission and a Delaware court demanding that UK born Easterbrook, who was dismissed last November, return his $40m (£30.5m) severance payment, which was mainly in stock grants and options, after it discovered emails and explicit photographic and video evidence of three alleged sexual relationships he had with former employees, in contravention of the company's wholesome family image. McDonalds' claimed that a lot of the material it had recently obtained was originally sent from Easterbrook's company email account to his personal e-account.

Easterbrook was given $40m in stock-based benefits and six months pay - $670,000 – on leaving, after he insisted he had had only a non-sexual relationship with another former employee and so was 'terminated *without cause*' – enabling him to obtain "*substantial severance benefits.*"

Then last July McDonalds was tipped off that Easterbrook, allegedly, had had a sexual relationship with another staff member. A thorough company probe then turned up sexually explicit photos and videos purportedly showing several female McDonalds employees in various revealing poses. The court papers said that these proved that he had violated a company ban on intimate relationships between company employees.

Date stamps on photos of *'employee 2'* allegedly showed that Easterbrook had approved a special discretionary restricted stock grant for her "*shortly after their first sexual encounter and within days of their second*." McDonalds claimed in the court papers that recent evidence showed Easterbrook had had sexual relationships with three McDonald employees in the year before his termination; "*that he had approved an extraordinary stock grant, worth hundreds of thousands of dollars for one of those employees in the midst of their sexual relationship*" and that he was knowingly untruthful with McDonalds' investigators in 2019.

McDonalds claims that it would not have agreed the severance payment to Mr Easterbrook had it known at that time about Mr Easterbrook's alleged sexual relationships with other female employees. It alleged that he had breached his fiduciary duties as an officer and director of McDonalds and was therefore seeking compensatory damages from him. It told the court that it had taken immediate action to stop Easterbrook from exercising any stock options or selling any stock which was part of outstanding equity awards to him.

The severance agreement contained a clause saying that if the plan administrator subsequently learned that Mr Easterbrook had committed any act of omission that would constitute '*Cause*' then the company would be entitled to stop benefit payments and demand repayment of payments made to that date.

He joined McDonalds in 1993 as a branch manager and became its UK chief in 2006 and then became president of its northern European business, in charge of 1,800 restaurants. In 2011 he became ceo of Pizza Express and then Wagamama in the UK but then went back to McDonald's as chief brand officer in 2013. He then became overall ceo in 2015, running the business from its Chicago headquarters, earning $16m-a-year [£12m]. Mr Easterbrook later claimed in court papers filed in the US by his lawyers, that McDonald's knew about his sexual relationships with women who worked for the American burger giant. He asked for McDonalds' case to be dismissed, claiming that it was without merit.

Roadchef: efforts for tax-free compensation fail

Attempts to change the tax laws to enable the **Roadchef** Esop participants to receive their compensation pots tax-free have failed, one of the beneficiaries has been told. The former motorway services chain employee was given the bad news by her MP.

This failure was a major setback for the Roadchef Employee Benefit Trustees, whose trustee chairman, Mr Christopher Winston Smith, of Reed Smith Corporate Services, lobbied Tory MPs to support amending the current tax legislation in order to provide a tax-exempt solution for the beneficiaries, who have yet to receive a penny of their court-ordered compensation.

Treasury junior minister Jesse Norman MP has discussed with senior HMRC officials how to resolve the festering sore of the Roadchef Esop compensation scandal but, apparently, HMRC has dug in its heels and refused to budge.

The Roadchef beneficiary told *newspad* that a group of sympathetic MPs had failed to get the breakthrough they had been looking for: "*I got an email from my MP. They never got the breakthrough they were looking for- all the amendments were rejected, so it will be a court or tribunal case and we could all end up with nothing after all these years. It is shocking*," said the former employee and Esop participant. "*Our representatives are flogging a dead horse. They have wasted all or money on fighting something they were never going to win. Do you think they will put their expenses back in the pot and give us something from the money that belonged to us?*

Now HMRC is expected to issue tax charge notices to hundreds of former employees, mostly low paid, of the motorway services group who participated in one of the UK's first Esop schemes.

Mr Winston Smith warned the Esop beneficiaries that they could end up with next to nothing after a 20 year battle for justice unless HMRC agreed not to tax their varying compensation pots, which it has not. As a last resort, he has threatened to challenge HMRC's handling of the Roadchef case before the tax tribunal, but he cannot act until HMRC reveals its final decision over whether and at what rate the beneficiaries are to be taxed on their compensation.

Mr Winston Smith told the beneficiaries that the clock was ticking against HMRC, which had to decide shortly whether to "*raise or lose the right to make certain tax assessments on the Trust and our* *beneficiaries."* He complained that HMRC officials had raised with him various questions under their statutory powers, but that the info they had requested was six years old and concerned only how much - and not whether - tax was payable by the trust, or the beneficiaries.

The trustee told the beneficiaries in a recent letter: "*Such assessments could lead to a tax bill that could wipe out all that which we have recovered. If they (HMRC) raise assessments, we shall have to appeal them in the Tribunal. That will take more time.*"

Six and a half years ago, High Court judge, Mrs Justice Proudman, ruled that Tim Ingram Hill, former chairman and ceo of Roadchef, breached his fiduciary duty when he transferred his employees' Esop shares from the original EBT into an executive performance shares trust which he controlled, but there was no suggestion that he had acted illegally. The court heard that the directors of REBT1 were unaware that Mr Ingram Hill could or would receive the shares (*via a grant to him of options over the transferred shares)* that were to be transferred from EBT1 to EBT2.

The judge declared the shares transfer to EBT2 as null and void and ordered him to pay compensation to the surviving c.500 former employees who had participated in the company Esop. In a later out-of-court settlement, Mr Ingram-Hill agreed to pay compensation to the beneficiaries, but the amount has never been disclosed.

The employee shares were sold by Mr Ingram Hill, together with his own Roadchef shareholding, to Nikko Corporation in July 1988, giving him a pre-tax profit of c. £27m, but neither the employees, nor their trade union, could afford to fund a court case to demand full compensation for their Esop shares. It was only two decades later, after the law was changed, that their lawyers could obtain litigation funding.

Furthermore, the trust deed, *one of the first of its kind*, which set up the Roadchef '*Share Participation Scheme,'* in December 1986, was flawed. The Esop was supposed to protect an initial 12.25 percent of the total equity, to be shared equally among staff, However, its definition of 'beneficiaries' was too loose, as a result of which the judge felt obliged to support an *ad hoc* formula for the compensation share out: 61 percent for the Esop participants; nine percent for work colleagues who could not/did not participate in the scheme and the 30 percent residue for 3,000 more recent Roadchef employees who were not involved in the share scheme.

Two years ago, the trustee won a significant victory for the Roadchef beneficiaries when HMRC was forced to hand over c. £8m of 'tax' which it had received from Mr Ingram Hill. Since the judge had voided the Esop shares transfer, it follows in law that part of his share sale should have been revoked.

It is believed that total legal costs in the case, including those of Harbour Litigation Funding, already exceed £5m.

Executive reward under pressure

Ceos in the UK's top 30 companies had their overall reward pinned back by an average £400,000 last year, revealed **Deloitte**'s annual report on executive remuneration. Their total reward fell by seven percent to an average £5.9m after increasing pressure from shareholder advisory groups over alleged excessive pay-outs. However, further down the list of FTSE top 100 companies, senior executive reward still went up in 2019, said the report. Deloitte said that more than half of FTSE100 companies had now at least cut back ceo base salaries as the impact of the pandemic knocked many more companies off course.

Finance directors took a hit last year, as their average total annual reward fell on average by 12 percent to £1.9m.

Only eight FTSE100 companies suffered shareholder rebellions of more than ten percent over their executive reward reports last year, compared to 23 in 2018, probably because many big companies agreed to cut back their annual senior executive pension cash contributions, said Deloitte.

"Pensions have been the top topic of this agm season and are an example of investor focus on pay fairness across the workforce," said Stephen Cahill of Deloitte. "While it has been a quieter agm season, shareholders have demonstrated that they will hit hard where companies fall short of expectations in this area." He predicted that executive reward would come under intense scrutiny in the year ahead to ensure executives were not immune from the wider economic and social impact of Covid-19.

*Some of the UK's largest listed companies failed to review their senior executives' large salaries during earlier stages of the pandemic, an executive reward report claimed. Despite some high-profile reports of executive pay cuts, these were mainly "superficial" or "short-term", it said. Nor had such companies addressed the culture of *excessive* bonuses, said the authors, the *Chartered Institute for Professional Development (CIPD)* and the left-leaning *High Pay Centre* think tank. Barely one-third (36) of FTSE 100 firms had made senior executive pay cuts, according to its analysis of company statements to the London Stock Exchange up to July 3, though the number taking action on top pay has swelled since then. "The most frequent measure has been to cut top salaries by 20 percent," the report said. "*However, salaries typically only make up a small part of a FTSE 100 ceo's total pay package*." Only 11 big companies had cancelled *short-term* incentive

plans for their ceos, while two other companies had deferred planned salary increases. None of the 36 had chosen to reduce their ceo's long-term incentive plan (LTIP), which generally makes up half of a ceo's total reward package. A few top hat salary sacrifices have already been reversed – as at Burberry and house-builder Persimmon – said *The Telegraph.*

CIPD ceo Peter Cheese said: "*The bulk of cuts made so far appear to be short-term and don't signify meaningful, long-term change. Pay among the FTSE 100 will probably fall next year, but this is more likely to be due to wider economic circumstances, rather than a fundamental change in approach to executive pay.* " Lavish company cash contributions towards senior executive pensions continued largely unabated in 2019, the report claimed. The median contribution to ceo reward in the top 100 companies was £189,000, or *24 percent* of median salary, compared to a median pension contribution of only 7.2 percent for the overall workforce, it said.

***IG Group** employees were treated to a bumper *£42m* bonus round in April, as business at the online trading platform boomed. Almost 2,000 staff have logged on from their homes around the world during the pandemic. Net trading revenue from March to May more than doubled compared to the same period last year and the shares have risen by 30 percent in the past year. For IG and rival spread betting firms such as CMC Markets and Plus500, wild swings in financial markets attracted investors and raised the prospect of big gains - and losses. Chinese American June Yee Felix, IG's ceo since October 2018, has sailed through the Covid-19 crisis which saw the firm's pre-tax profits soar 52 percent to £296m in the 12 months to May.

*Two former senior executives of **Sirius Minerals** were paid almost £2.2m in bonuses before it was sold to *Anglo American* in a deal that resulted in heavy losses for many retail investors. Chris Fraser, who was ceo of the fertiliser miner, received c. £1.3m and fd Thomas Staley was paid more than £870,000, according to its accounts. Sirius's board approved the payouts under long-term share award schemes a fortnight before the takeover. The sums, reported by *The Mail on Sunday*, angered many private investors. Sirius had an ambitious project to develop a mine under the North Yorkshire Moors to produce polyhalite, a hydrated sulphate of potassium, calcium and magnesium, often used as a fertiliser.

Covid pushes SMEs towards share plans, claim

Prodded by the pandemic, one in four SMEs who responded to a recent survey now offer shared ownership of one kind or another to their employees. The survey of 500 SME companies, carried out by share scheme platform *Vestd,* suggested that Covid-19 has forced almost half these businesses to re-evaluate the way they work.

More than 60 percent of SMEs who responded said they would not be giving staff pay rises this year, which explains why employee share schemes are much more popular in cash-strapped companies than they were a year ago, as they are being used as a substitute for pay. Sectors where shared ownership in SMEs is most common include automotive, finance and banking, food and drink, hospitality and leisure and insurance, the respondents revealed.

However, the bad news was that the vast majority of SME employees still were not being incentivised by equity, despite the positive effect it could have on performance, cash-flow, loyalty and company culture. The study found that executives are twice as likely to benefit from equity rewards in SMEs, compared to the wider team. Of those companies that had a share scheme, just 34 percent make it available to all employees, the survey reported. Vestd's *Employee Equity Trends Report* said that 63 percent of SMEs won't be giving pay rises in the coming year, with 15 percent asking their teams to take pay cuts. It polled founders and senior execs in SMEs with between 11-250 employees.

Shared equity arrangements were found to be rare in the construction industry and health and pharmaceutical sectors. One reason for that was that a sizeable number of SMEs were still in the dark about employee share schemes and how to install them. The South East had the lowest adoption levels of employee share schemes, the survey revealed. The most popular employee equity schemes used by SMEs today, it said, were: *Enterprise Management Incentive (EMI) share option scheme (*used by 41percent of SMEs who offer schemes*);*Direct share award schemes (35 percent); *Share Growth schemes (31 percent), *Share Incentive Plan – (SIP used by 23 percent). Chris Lake of Vestd said: "We have a lot of funded start-ups that have been mandated to get their share scheme set up in advance of larger funding rounds *(the VCs want to minimise dilution so these things are normally in place before they put their money in*). Some pre-profit bootstrapped start-ups may think twice before setting up a scheme, though digital platforms like Vestd have greatly reduced the fees. There is a dilemma here too as it is in the best interests of employees to formally agree their equity as early as possible, for the maximum upside in company growth / valuation / gains: a balance to strike for all."

Share plans in a Covid world

Centre member **EQ** (*formerly Equiniti*) has seen many companies implement new share plans that they weren't expecting to when 2020 started. Motivations range from cash retention and redundancy avoidance to rewarding employees who have adapted and thrived in their new ways of working. EQ's *Boardroom* bulletin set out three ways in which companies can use share plans imaginatively in their businesses:

Salary alternative: Companies wanting to preserve cash within the business or wanting to avoid making redundancies or furloughing, can delay a percentage of employees' pay and replace it with a share award that would vest either within a specific timeframe or at the end of the financial year. Companies implementing these plans typically follow a similar structure including: *Offering the plan to employees who fall within a certain pay bracket *Allowing employees to either choose the amount of their salary sacrifice (typically ranging up to 30 percent) or having a predetermined percentage *Implementing a 'look back' feature at the point of vesting, which allows the award to vest at the prevailing market share price, but the company will make up the difference between the award share price and the vesting share price by way of additional shares or cash payment.

Retention & Recognition Share Award: Companies wanting to avoid rewarding employees with cash are considering free share awards that enable all employees to benefit equally, with a short deferral period or a short period between the award being made and vesting. Companies variously: *Issue free shares to all employees - the only condition being employment at the time of vesting *Grant shares in line with the release of their financial results *Have an average period before vesting of 18 months.

Substitute equity for cash bonuses: Some companies with obligations to pay a bonus want to use shares as an alternative to cash payments. Companies are achieving this by: *Using a conditional share award that vests shortly after award acceptance; *Putting the resulting shares into a nominee account; *Restricting the shares with a minimum holding period of 12 months. Awards are settled with either newly issued or treasury shares, shares already in an

Employee Benefit Trust (EBT) or a combination of all three. Market purchased shares are unlikely to be used at this time, as the aim is to preserve cash, said Jennifer Rudman, EQ's industry director, employee plans

Pandemic news: employees turn bolshie

White-collar employees turned bolshie by refusing their employers' requests to return to their pre-Covid workplaces, reported the Chartered Institute for Personnel & Development (CIPD). They told their employers that they had been more productive working from home, managed child-care more easily and a few had even left the country! Some of those forced to return to their workplaces were feeling "resentful" towards colleagues who had been allowed to continue working from home, said CIPD. At the beginning of the pandemic, the feeling was: -*We're all in this together* – but now a lot of employees were feeling burnt out and fed up.

From August 1, companies were given more power to ask employees to return to their places of work, provided Covid safety measures had been carried out, but many employers did not do so, citing problems over employee child care arrangements and worries over social distancing, particularly when using public transport. *The unspoken fear among many employers was that ordering most staff back to their offices could provoke new clusters of Covid-19 infection, which could then lead to expensive and image-denting legal actions against them by their employees.*

Fifty of the UK's biggest employers questioned by BBC have said they had no plans to return all staff to the office full-time in the near future and almost half said that they did not have *any plans* in place to return employees to the office. However, 20 had opened their offices for staff unable to work from home. The news came as many employees return to work from the summer holidays with the reality of a prolonged period of home working becoming increasingly likely. One of the main reasons given for the lack of a substantial return was that firms could not see a way of accommodating large numbers of staff while social distancing regulations were still in place.

Tube journeys rose by slowly, but remained at only 30 percent of pre-Covid levels. As August drew towards its close, more than 70 percent of civil servants were still working from home. The UK was "notably lagging" in getting its office employees back to their normal desks, said *Morgan Stanley.* An early August survey by the bank revealed that just 34 percent of UK white-collar employees had returned to their places of work, compared to 83 percent in France and more than 70 percent in Germany, Italy and Spain. Goliath investment bank *JP Morgan* told its London staff they would continue to work remotely on a part-time basis. *Linklaters* said that employees would be free to work from home for up to half the week, subject to notifying their section heads. Rio Tinto has not asked any of its staff to return to its London HQ, which remained closed for pandemic safety reasons.

Bromley based insurer *Direct Line*, which operates a *Buy As You Earn* employee share scheme, with a one for two top up share award, expects no more than one fifth of its 9,000 strong workforce to be back in their offices this side of Xmas. It has invested in technology to help home -based staff to work more effectively. Fellow insurer *Hiscox* re-opened its London office weeks ago, but most staff were still working from home. Canary Wharf Group ordered staff to return to its offices as fears grew that neither Canary Wharf, nor The City would return to being the thriving hubs of financial life they once were, owing to the unexpected success and popularity of remote working. Out of 120,000 people who used to work in Canary Wharf, only 9,000 or so were coming in daily in late August.

HSBC said that its maximum office capacity had been reduced to just 20 percent of normal, due to social distancing measures, so a return to normality was impossible in the short term. Only 2,000 of its 10,000 London employees would be returning to its UK HQ from September, while 80 percent of Credit Suisse's UK workforce would continue to work from home. Some companies fear reception lobby queues of staff and visitors unable to use the lifts together, due to social distancing rules. RBS told more than 50,000 staff that they would be working from home until January. *Google*'s 200,000 staff worldwide were told they can continue to work from home until next summer. Google's US offices remain closed. *Facebook* is to keep its 48,000 worldwide staff away from their offices until July next year. Many employees remained scared of using public transport. Meanwhile, the age of '*Presenteeism*'' – *the fear of leaving your desk* – is over, said Kevin Ellis, chairman of *PwC*, which has 22,000 UK staff, mostly working from home. He said that remote working during the pandemic had '*bashed away presenteeism forever.'* Most staff would continue working at least partly from home once Covid-19 had receded, but more were returning to their offices at least part-time each week, often seeking live social contact with colleagues, he added. Fund manager *Schroder* is to allow thousands of its UK staff to work permanently from home. It told staff that the old *Nine-to-Five* working week would not return. Looking ahead, BP is believed to be planning a mixed home working and office hot-desking future for around half its total payroll.

*Up to two-thirds of employees paid to stay at home and twiddle their thumbs on furlough carried on working regardless, claimed a study by Oxford/Cambridge & Zurich universities. It revealed that up to six million of them continued to work in April and May, despite their employers claiming a maximum £2,500 a month for each one on furlough. The ban on working during furlough was "routinely ignored," 63 percent of surveyed employees having admitted to breaking the rules, said the study. HMRC is investigating 8,000 tip-offs to its fraud hotline and rejected 30,000 furlough cash claims considered dubious.

Only one in eight UK employees were still being paid to stay at home by early August, according to the Office for National Statistics. The number of employees on the Treasury's jobs retention scheme had fallen by about 60 percent from its May peak.

*There have been only six company floats (IPOs), collectively worth just £650m, in the City so far this year, the lowest level since the financial crisis of 2009.The near shutdown of the listings market is squeezing out pension funds, private investors and employee share ownership. Instead, £27bn has been raised to date via UK private equity fund-raising. Private equity is not often a friend of employee share ownership, though Pete Stavros at **KKR** is a notable exception. For a decade, under Pete's direction, Centre member KKR has been developing an employee engagement and ownership model, which allows every portfolio company employee to become a part owner through share ownership.

COMPANIES

*Employee share ownership fan **Admiral**, the Cardiff based car insurer, delivered three dividends to its shareholders, many of them employees, after strong first-half results. Accordingly, Admiral is giving its 10,000 employees *free* shares worth up to £1,800 per head, under its Share Incentive Plan (SIP). The employee shares are being placed in an EBT by the end of this month. All employees who work at Admiral Group are given shares after one year of service, a policy introduced by Henry Engelhardt, founder and former ceo of Admiral, *who is now a director of newly formed VC insurance company, Wrightwood Investments*. Admiral employees receive dividends bi-annually and can sell their shares after three years. For the six months to 30 June, pre-tax earnings at the FTSE 100 company were £286.7m against £220.2m last year thanks to strong prior-year reserve releases, higher investment income and a reduction in motor insurance claims due to travel restrictions. This allowed the firm to declare an interim dividend of 70.5p per share – an increase of 12 percent, made up of a normal dividend of 55p and a special dividend of 15.5p – and to pay the 2019 special dividend of 20.7p per share which it had previously deferred. In spite of paying £25 refunds to more than four million UK policyholders to compensate them for reduced driving during the pandemic, it still announced a 31 percent surge in profits before tax to £286.1m for the six months to June, as customer accounts surged.

***AO World** shareholders were being urged to vote against a lucrative profit share scheme — a move that has infuriated the founder of the online white goods retailer. Glass Lewis, which advises fund managers, is concerned about the size of the potential payouts and the fact they are linked to the share price. Bolton based AO's 171.8p share price would have to hit £12.55 by 2025 for the full payout. The 3,000 staff of the Bolton-based business would share in the rewards, while executive payouts are capped at £20m. John Roberts, 46, founder and biggest shareholder with 22 percent, has said he would give his pay-out to charity. Glass Lewis fears a stock market boom could make the bonuses easier to achieve and could result in excessive pay-outs. Above a share price benchmark, ten percent of the added value will be shared out among all the employees. Shareholders will vote on the plan **this month.** Management said employees would get the equivalent of one year's salary if the share price reached £9.41.

***BP** shocked investors, who include employee shareholders, by cutting its dividend in half, paying out just 5.25 US cents per share. This drastic step followed BP's worst ever quarterly loss of $6.7bn, as oil prices plunged. The company has announced 10,000 job cuts in order to save money.

*The FTSE 100 company **Bunzl**, resumed dividends after demand for personal protective equipment and hand sanitisers boosted sales and profits. Last April it cancelled its final dividend due to the business uncertainty created by the pandemic, ending 27 years of unbroken dividend growth. Bunzl reinstated the 35.8p-a-share final dividend for 2019 and said that it would pay an increased interim dividend of 15.8p a share after a 22 percent rise in pre-tax profits to £245.4m in the six months to the end of June. Revenue increased by 6.7 percent to £4.84bn.

*Drinks producer **Diageo** started arbitration proceedings against luxury goods company **LVMH**, controlled by billionaire Bernard Arnault, over a

€181m dividend which Diageo says it is owed. The maker of Guinness and Johnnie Walker owns 34 percent of LVMH's Moet Hennessy wines and spirits division, as a joint venture. Diageo explained in its annual report & accounts that it believed it was entitled to a share of LVMH's profits in that division in the form of dividend.

*Commodities giant **Glencore** scrapped its planned dividend pay-out after recording a $2.6bn net half year loss, blaming uncertainty due to the pandemic and the need to reduce debt.

*The founders of investment company **Hargreaves Lansdown**, Peter Hargreaves and Stephen Lansdown, took £63.4m and £18.6m respectively in dividends after group profits rose by almost 25 percent in the year ending June. It raised its dividend payment to shareholders by almost one third. However, the company, which manages £104bn of investors' money, faces legal action from furious investors in the collapsed Woodford funds empire, which it had plugged as a *Best Buy* for customers.

*The annual compensation of **Jaguar Land Rover's** ceo rose to £4.44m during a year in which more than 4,000 employees lost their jobs and the West Midlands carmaker fell to a second consecutive year of heavy losses. Sir Ralf Speth's package, which includes his salary, bonus and share awards, was up 30 percent on last year and took his earnings to £18m in the past four years. The details emerged as rescue talks ended between Jaguar Land Rover, Tata Steel and the UK government, which might have led to UK taxpayers owning stakes in the two businesses, leaving both companies reliant on private financing to weather the downturn, said the *Financial Times*.

*The directors of satellite company **OneWeb** were accused of handing over millions of dollars in retention and severance bonuses just before it filed for bankruptcy last March, but this standard practice in the US, because a legal loophole allows companies to award executive bonuses right up to, but not during, the bankruptcy process. Later, a consortium, comprising the UK government and Indian telecoms company Bharti Global agreed to buy it out of bankruptcy for £763m.

*Publisher **Pearson**'s new ceo Andy Bird will continue to live in Los Angeles, though the company will cover his rental costs of a New York apartment in the hope that he will win Pearson new US based business. Mr Bird will receive a *golden hello* of £7.1m in shares after buying £2.85m worth of Pearson shares. His maximum annual reward is fixed at $7.7m (£5.85m)

*Czech billionaire Daniel Kretinsky raised his stake in **Royal Mail (RM)** yet again, via his investment vehicle *Vesa Equity* and now holds 13.1percent of the equity with voting rights. However, it is still unclear whether he will launch a full takeover bid for RM, whose share price has been rising slowly from the doldrums six months ago. *Schroder Investment Management* is still in pole position on RM's share register with a 14.8 percent holding. Postal employees hold a total stake of 11.46 percent, of which 7.6 percent is held directly in the RM SIP and a further 3.86 percent by the RM EBT. *Mining giant **Rio Tinto** cut the bonuses of three executives over the destruction of two ancient caves in Australia. In May, the world's biggest iron ore miner destroyed the sacred Aboriginal sites in Pilbara, Western Australia. The company went ahead with the destruction of the Juukan Gorge rock shelters despite the opposition of Aboriginal traditional owners. They were among the oldest historic sites in Australia. The caves showed evidence of continuous human habitation dating back 46,000 years. Rio Tinto's ceo Jean-Sebastien Jacques will lose various bonuses worth in total £2.7m. Chris Salisbury, ceo of iron ore, and Simone Niven, group executive of corporate relations, will lose payouts of more than half a million pounds each. The company, whose shares are listed in both London and Sydney, said it would provide more details on the bonus cuts in its 2020 remuneration report, but all three will keep their jobs.

***Staffline** recruitment firm faced a shareholder revolt over a pay off and a pay rise for former executives who have now left. Shareholder advisory group ISS raised concerns over the £38,000 pay off for former non executive chairman John Crabtree and a 22 percent pay increase for ex FD Mike Watts. ISS said that it was inappropriate for non employees like Mr Crabtree to be awarded goodbye pay offs. It was dissatisfied too with Staffline's explanation for the large pay rise given to Mr Watts, who left the company in November last year.

*Digital bank **Starling** has awarded shares to around 800 staff under the umbrella of a Share Incentive Plan. Its banking app offers personal, business, joint and euro current accounts on Android and iOS. **Anne Boden** is the founder and ceo of Starling Bank**.**

*Electric car producer **Tesla** announced a share split, in order to attract more small-scale private investors, as the price of just one share rose to almost $1,500..The split operated from August 28, when one share was split into five (*four new ones for each old share held)* Tesla is valued on Nasdaq at $275bn — ten times as much as Ford, four times more than Volkswagen, a third more than Toyota

*About 350 employees at oil trader and shipper **Vitol** shared a bonus pot of £1.7bn, distributed via share buy-backs, giving each an estimated £4.77m**,** as profits rose substantially, in the pre-pandemic year ended December 31 to £1.77bn.Vitol is the world's largest independent energy trader.

Employers hold onto pension contributions, claim

Cash-strapped employers are deducting pension contributions from staff pay packets and keeping the cash, claimed the insurance company *Royal London*, which runs pension schemes for 20,000 employers. Almost ten percent of these employers have missed at least one monthly pension payment since lockdown, it told *The Times.*

Normally, companies swiftly pass on their staff pension contributions to scheme providers like Royal London to be invested, but against the background of the pandemic, these are not normal times. There is evidence too that employers' own pension contributions are being withheld for the moment too, as desperate companies seek cash from wherever they can get it easily in order to keep themselves afloat.

*Employee pension savers, who want to transfer out of their 'gold plated' final salary schemes, may find it difficult to find reliable advice as regulation is pushing many financial advisers out of the market, claimed *The Telegraph.* About a quarter of advice firms have stopped offering pensions advice, said the Financial Conduct Authority, which has outlawed *contingent* charging schemes, whereby the adviser is only paid if the client goes through with a pension transfer. Those seeking to transfer defined benefit pension pots of more than £30,000 must consult regulated advisers before doing so. At the same time, the number of employees wanting to access cash by transferring out of final salary schemes is increasing. Retirees are distressed by the low company pensions they are offered, due to rock-bottom annuity rates. The government legislated to end compulsory annuity purchases which, some say, has accelerated the transfer process. Last September an average 65-year-old could buy a fixed annual annuity income of only ***£4,654*** by surrendering a £100,000 pension fund. This was £759 less (15 percent) than would have been received at the beginning of 2019, said *Hargreaves Lansdown.*

***BT**, which has the private sector's largest occupational pension scheme, is offering the trustees a share in the national network as a security so that members' retirement payments would be funded in the event of any future cash crisis. The idea is that were BT to collapse, fund members would own a £20bn chunk of BT's infrastructure. Its overall pension fund deficit still exceeds £10bn, but BT has agreed to make annual top up payments of £900m to the fund until 2030.

*The Universities Superannuation Scheme (USS), which manages the pensions of 460,000 lecturers and administrators, now has a *£20bn* deficit – up from a £3.6bn deficit at the last full valuation two years ago. Staff pension contributions have already risen to almost ten percent and will rise to 11 percent in October next year, but experts said that staff contributions would have to rise to more than 40 percent to cover future liabilities. However, campus begging bowls may go unfilled, as ministers are still smarting over universities' refusal to reduce vice-chancellors' salaries and perks which, in some cases, have ballooned to more than £400,000 a year. Pensions formerly based on final salary are now calculated on career average salary, which is much lower for rank-and-file lecturers, but the USS still pays an average £18,000 a year to *retired* lecturers.

*The *Investment Association* and others are demanding that companies reduce their hitherto substantial annual cash pension contributions for directors and other senior executives. Some quoted companies have been awarding them pension contributions of up to 40 percent of their base salaries, compared to an average of seven percent pension contributions for rank-and-file employees. Good corporate governance now requires that such companies reduce (progressively) their executive pension contributions to the point where they coalesce percentage-wise, with those they award to other employees.

ESG more than 'nice to have'

Environmental, social and governance (ESG) matters are increasingly important in corporate deal-making, strategy, disclosure and investment planning, said Centre member **White & Case**. ESG encompasses climate change and other environmental risks and impacts; employee health and safety; pay equity; board and employee diversity; corporate governance; data security and customer privacy; consumer and product safety standards; business continuity; disaster recovery and crisis management, as well as human rights concerns, including the use of trafficked or child workers in the supply chain. ESG has become shorthand for the risks and opportunities that could impact a company's ability to create value in the long-term—and how the company is managing those risks and taking advantage of those opportunities to ensure its long-term economic stability.

This year's events had brought ESG concerns to the forefront for many companies, especially in the energy and mining sectors. More banks were scrutinising investments and loans in greenhouse gas emission-intensive projects, and more energy companies were announcing lower greenhouse gas intensity and emissions targets. All companies manufacturing, selling and extracting goods and providing services were affected, including tech companies' approach to their services and products. "Companies, investors, and governments must prepare for a significant re-allocation of capital," said Larry Fink, ceo of BlackRock, the world's largest fund manager, with US$7 trillion under management. It aims to scale up sustainable assets from US$90bn to US$1 trillion over the next ten years (*Wall Street Journal*). In the first four months of 2020, at least US$12.2bn was invested in ESG funds—more than double the investment during the same period last year—and more than 70 percent of ESG funds performed better than their counterparts during this period. Since then, employee health and safety had taken centre stage in company disclosures amid the pandemic, which had placed the spotlight on the importance of crisis management and business continuity—for this crisis, and beyond.

Investors worldwide want better, more accurate insight into companies' ESG credentials—and not just for "*do-gooding*" purposes, said White & Case. Of circa 2,000 academic papers on the topic, *70 percent found a positive correlation between higher ESG scores and financial returns,* measured either by equity returns, profitability or valuation multiples. Globally, ESG investing is seeing a record inflow of funding, as the value of funds that have integrated environmental, social and governance factors has more than quadrupled since 2014, rising to $485bn as of 2019.

Companies are in a race to increase their ESG ratings and scores to capitalise on the investor-led ESG *gold rush*. Many third-party firms now rank and rate company ESG practices for various investors and other stakeholders. Investors are turning to corporate performance rankings on human rights, informing both shareholder resolutions and exclusionary investment policies.

The growing relationship between M&A and ESG suggests that companies who told their ESG story well with strong ESG propositions attracted growing interest, not only from investors in capital markets, but from corporate buyers seeking M&A opportunities too. Deals could help companies redefine their business models or reshape their product portfolios. According to a survey conducted by *Ipreo* in Q1 2019, 53 percent of respondents said they expect ESG factors to become significantly more important in M&A decisions in the next 12-24 months, with climate change and emissions seen as the most important issues. More than half said they had walked away from an M&A deal or investment due to a negative assessment of ESG issues at the company.

Moody's estimates that reduced demand for power in the US will lead to an annual 10-20 percent drop in the country's electric power emissions this year, before recovering, but a more lasting transition is in motion. Even before the pandemic, wind and solar were on the rise, particularly outside the US.

ESG had moved from '*nice to have'* on the corporate wish list to up front, partly due to the pandemic. Governments were either lending or giving huge sums to the corporate sector to keep it afloat and like France they were taking equity stakes in large companies. Share prices of companies with poor ESG rating fell more sharply than those with good ESG rating when the pandemic got under way in Europe. **Wirecard** was rated E months before scandal broke as its boardroom governance was sub-standard. Institutional investors understood that active engagement in the companies they invest in was not only designed to produce better long-term returns but part of their social purpose too.

Post Brexit transition talks

UK sponsors of employee share plans in the EU were unhappy over reports that UK negotiators had given up on earlier demands for '*enhanced equivalence'* for UK financial services after December 31. Allegedly, negotiators have resigned themselves to Brussels retaining complete control over the equivalence regime, wrote Jeremy Warner in *The Telegraph.* It looked as though UK financial services would be largely off the agenda during the last few months of the post Brexit trade 'negotiations.'

"For financial services the end of the transition period – at 23:00 UK time on December 31 2020 – marks a licensing cliff edge as EU-UK passporting rights fall away," said Centre member **Linklaters** in a client briefing note. *"Unlike the UK, the EU has not yet implemented any transitional measures to smooth out the licensing cliff edge risks arising at end of the transition period. The Commission cautioned that, even if the UK and the EU concluded a trade agreement, there would be broad and far-reaching changes in many areas including financial services.*

"It is uncertain whether the Commission will implement temporary equivalence decisions in other areas. It said future equivalence decisions would depend on several factors, including: whether there would be any risk to the financial stability of the EU/ individual member states; the perceived readiness of UK firms to service EU clients following the end of the transition period; and the potential impact on EU clients as a result of UK firms ceasing to provide services to them. Given the amount of time that has passed since the UK notified its intention to leave the EU and the UK government's decision not to extend the transition period, the Commission may conclude that firms have had sufficient time to prepare for cliff edge risks and that therefore no further measures are required at the EU level

"The ***share trading*** *obligation (STO) requires MiFID firms to trade shares which are admitted to trading on an EEA trading venue (ToTV) only on an EEA trading venue, an EEA systematic internaliser, or on third country trading venues which have been deemed equivalent. Some shares may be caught by both the EEA and UK trading obligations. Mutually incompatible obligations could therefore arise in some situations, e.g. where a UK firm deals with an EEA broker regarding a share which is both EEA and UK ToTV, imposing artificial barriers on firms' ability to execute transactions on the most competitive venues,"* warned Linklaters.

*The latest round of post transition trade talks in

Brussels didn't go anywhere, according to the participants. The EU's chief negotiator, Michel Barnier rejected any attempt to fast-forward trade negotiations, ahead of other parts of the talks, such as fishing rights and UK hauliers' rights to deliver goods in the EU. The next round of talks was due to start in London on September 7, with the ostensible deadline being October 15-16, when the 27 EU heads of state meet in Brussels under the auspices of the European Council.

The key issues for UK share schemes remain whether, from January 1:*the EU will continue to allow data from employee plans on the European mainland to be sent to plan sponsors based in the UK, provided the data transmission is compliant with the GDPR; *whether UK plan sponsors wanting to extend or make new awards for their schemes in European subsidiaries will be required to publish multi-lingual prospectuses in line with the revised Prospectus Regulation; *whether they will or will not be granted equivalence status to permit them to continue to operate financial services (including employee equity plan work) within the EU and *whether EU-UK share trading will be restricted (*see Linklaters note above*).

+Boris Johnson faced a Brexit test over the future of Eurotunnel operations, because the EU wants the UK to drop its opposition to a role for the *European Court of Justice* (ECJ) in British affairs to ensure trains keep running between France and the UK after the Brexit transition period ends. However, the EU's plan to keep the ECJ as an arbiter in disputes is a non-runner warned Downing Street.

The European Commission wants France to negotiate a new bilateral deal with the UK giving the ECJ the powers to resolve future disputes between the two countries as "*EU law would no longer be applicable to the part of the Channel fixed link under the jurisdiction of the UK*" after post-transition Brexit. Unless there is an over-arching deal with one body responsible for legal disputes covering the 30-mile (50km) tunnel there will be chaos, insiders said. "*It would mean train drivers would have to have two sets of qualifications to drive on the British and French side of the tunnel. It would affect how you operate the tunnel with potential for divergence in the future on everything from signalling, voltage, the radio systems, the signalling system, ventilation, hydraulics. It would be like driving on the left- and right-hand side of the road at the same time,*" said a source.

Experts said that finding a way of adjudicating over future disputes between the bloc and the UK without some role for the ECJ was almost impossible. Catherine Barnard, professor of EU law at Cambridge, thinks "*It is going to be very difficult to exclude the ECJ unless we have such a thin trade deal that it's not worth the paper it's written on with no principles of EU law engaged at all*". It is understood that one option discussed at the negotiating table is a political mechanism for dispute resolution, said insiders.

The Commission said that applying the *free trade agreement* model excluded mutual recognition of regulatory frameworks and regulatory decisions and that therefore border checks would apply. Instead, the focus would be on agreeing WTO plus obligations on technical barriers to trade and on sanitary measures.

WORLD NEWSPAD

CLOSE UP: France: Look back to General de Gaulle to understand why most French companies who employ more than 50 people have some form of employee financial participation (*be it only profit-sharing in some cases).* For de Gaulle was a visionary for understanding the significance of involving French employees in the profits of business. In 1959, he ruled that all companies with more than 50 employees should offer a financial participation scheme, by which he meant profit-sharing. Conversely, even today, only four percent of employees who work for companies employing less than 50 people enjoy financial participation.

The financial publication *Les Echos* crowed recently that France was champion of Europe for employee share ownership, as more than 3.2m French employees were shareholders in their employer's company last year. This compares to almost two million in the UK and only 700.000 in Germany. Furthermore, some €15.5bn (£14bn) was paid into one or more of the various French employee savings schemes, according to *L'Association Francaise de la Gestion Financiere (AGF).*

The 2019 'Pacte' Law abolished the 20 percent social tax on participation payments made by companies employing less than 250 people, which has given profit-sharing in smaller companies a shot in the arm. In order to set up *new* profit-sharing schemes, the management must negotiate in advance with the staff, who can bring in the unions. Sadly, many French SMEs still don't fully understand the major tax benefits of investing their own and employees' cash into either a *Plan d'epargne enterprise (PEE)* or a *Plan d'epargne retraite (PER).*

In addition, *L'Interessement* is a popular French performance-based bonus scheme, the proceeds of which (maximum bonus £27,800 per head for 2020), when invested in a company PEE, for five years, are subject only to social contributions and no income tax, or other taxes, when finally cashed in.

Germany: More than 40 current and former **Taxfix** employees traded in €3.8m worth of vested shares in April, when the fintech start-up completed its over-subscribed $65m fundraising, led by *Index Ventures*. For most start-up employees, cashing out equity is still a clunky process. The chances of the start-up being bought outright are slim, while the prospects of an IPO are even slimmer, as well as happening later in a start-up's life cycle. EU company staff stock policies are far less generous than in the US, despite recent regulatory changes to loosen stock option policies. Start-up employees normally need to wait until their company hits a multi-million valuation before being invited to sell their shares. Even then, founders and early investors are often given priority over employees. These obstacles are what prompted Taxfix, *which has helped more than 2.2m users file their taxes and refunds online*, to take the unusual route of offering an ***employee buy-back*** during its Series C round, said ceo Mathis Buechi: "*My first reaction was 'no way, that's really not a good idea, why would we do that?' But then I thought about it and it made sense. Our earliest employees took on low salaries and have done fantastic work and should be rewarded,"* he said. Mathis hopes Taxfix will set an example for other German start-ups, where, he claimed, employee stock options were "really bad" and were generally made up of virtual, or "phantom," equity.

Taxfix's valuation is believed to have grown exponentially since its earliest employees were first awarded a slice of the equity when it was founded in 2016. The fintech confirmed that c-suite executives were among those who had participated in the recent buy-back, and that all employee shares were on a four -year vesting scheme.

Pressure is mounting across Europe to better-reward early employees, led by the Not Optional campaign, backed by 500 European founders , which lobbies for share option reform. Meanwhile, companies which have hit unicorn valuations are inviting staff to sell part of their equity. Among them are UK cyber-security firm **Darktrace** and fintech **Revolut,** which staged a small employee-secondary during its recent $500m fundraiser. **TransferWise** has overseen three employee buy-back schemes, which will have made several employees into millionaires. Buechi argues that start-up employees shouldn't have to wait to take part in a secondary sale, if there is employee-appetite and the round is oversubscribed. He thinks that other founders will be inspired by Taxfix's decision to offer employees an earlier exit. Jeff Lynn, the chairman of crowd-funding and secondary-sale platform. Buechi acknowledged that deciding how much equity to give employees is a balancing act, concluding "the equity should be big enough that it matters, so if it becomes 10x, or 30x for everyone." Taxfix's total employee option pool is worth €40m, spread across several hundred current and former employees. Still, Taxfix capped its recent buy-back at a maximum of 50 percent of each employee's total share pool, with Buechi joking that he still wanted existing employees to be incentivised. "It's not about making them multi-millionaires." The company said it tries to educate eligible shareholders of the pros and cons of cashing in early.

***US:** Employees at *Blizzard Entertainment,* a division of Activision Blizzard, circulated a spreadsheet to anonymously share information about salaries and recent pay increases - an example of rising tension in the video game industry over wage disparities and executive compensation. Blizzard, based in Irvine, California, makes popular games including *Diablo* and *World of Warcraft*. In 2019, after an internal survey revealed that many Blizzard employees were unhappy with their compensation, the company told staff it would perform a study to ensure fair pay. Blizzard implemented the results of that study, which led to an outcry on the company's internal Slack messaging boards. The anonymous spreadsheet, reviewed by *Bloomberg News,* contained dozens of purported Blizzard salaries and pay bumps. Most of the increases were below ten percent, significantly less than Blizzard employees said they had expected following the study. Activision Blizzard spokeswoman Jessica Taylor said: "We are constantly reviewing compensation philosophies to better recognize the talent of our highest performers and keep us competitive in the industry, all with the aim of rewarding and investing more in top employees. This year, Blizzard top performers received a 20 percent salary increase and more people got promotions," she added. A pro-employee group recently criticised Activision Blizzard over the compensation of ceo Bobby Kotick, whose 2019 compensation was $40m, according to data compiled by Bloomberg, and the package has grown since then as the company's stock has soared in value. Last year, the company paid $15m in stock awards and sign-on bonus to incoming cfo Dennis Durkin.

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