Vol 39 No 7 April 2022

it's our business

newspad of the Employee Share Ownership Centre

Chancellor rejects Centre call for urgent EMI reform

Chancellor Rishi Sunak has refused to improve or update the immensely popular share options based Enterprise Management Incentive (EMI) scheme, which enables more than 13,000 young UK companies to incentivise their senior management and other key employees.

In a bombshell aside, buried in page 42 of the Treasury Blue Book accompanying his recent Spring Statement to parliament, the Chancellor put paid to the hopes of the Centre and SME companies and their advisers that he would reform EMI to stop hundreds of growing companies from being shut out from the scheme.

Instead, the Chancellor said he had concluded that the EMI scheme rules need not be changed, despite being presented with abundant evidence from leading Centre members, in response to his EMI consultation, that its qualifying limits were too strict and were impeding the UK's desperate search for improved productivity via dynamic gazelle-type young companies. Already in Europe, more than two million people are employed in start-up companies, as they record explosive growth – often supported by state incentives.

There were two crumbs of comfort for the UK share scheme sector however:

*First that he took no action on suggestions from the Office of Tax Simplification (OTS) to align upwards Capital Gains Tax charges on EMI gains in tune with much higher Income Tax rates. In addition, he did not alter the annual CGT exemption allowance of £12,300, though it will remain frozen at that level for four years.

*Secondly, he said he would expand the remit of the EMI review to consider whether the other discretionary tax-advantaged share scheme, the Company Share Option Plan (CSOP) could be reformed to support companies as they grew beyond the limits of EMI qualification.

At present, the CSOP permits option holders to have only £30,000 worth of unvested share options outstanding at any time within the scheme – a ludicrously low amount considering the CSOP was originally designed as an executive incentive. Its limits were established 27 years ago.

By contrast, EMI allows key employee participants to hold up to £250,000 worth of unvested options. In addition, the limit on the total value of options that can be granted under EMI is only £3m, which means that some SME companies find it impossible to extend the benefits of EMI to some of their wider workforce.

In the Blue Book, the Chancellor announced: "Growing businesses need skilled people to put their innovation into practice. Those companies with the highest growth prospects can face the greatest difficulties in attracting and retaining specialist skills.

From the chairman

It is vital that the government now steps up to the mark and defends employee shareholders in companies which are taken over by foreign acquirers. Britain may be open to business but not to funny business.

We read of companies round the world which benefit from the enthusiasm of shareholding employees. It is by no means a local curiosity practised here and there.

If the government stands firm and makes its stance known early in the transaction, then acquirers can factor in the additional measure of equity reward for employees.

I look forward to our symposium this week when we shall be announcing Esop Stars for 2021. We shall all remember 2021 as the Covid year and it will be reflected in the awards ceremony which concludes the day.

Malcolm Hurlston CBE

At Budget 2020, the government launched a review of the Enterprise Management Incentive (EMI) scheme, to ensure it provides support for high-growth companies to recruit and retain the best talent so they can scale up effectively, and to examine whether more companies should be able to access the scheme. ***The government has concluded that the current EMI scheme remains effective and appropriately targeted.***

"However, the scope of the review will be expanded to consider if the other discretionary tax-advantaged share scheme, the Company Share Option Plan, should be reformed to support companies as they grow beyond the scope of EMI."

This means that only certain SME companies with up to 249 employees and with gross assets of no more than £30m can launch an EMI scheme for some or all of their employees. Furthermore, qualifying companies must carry on a qualifying trade and examples of trades which do not qualify include leasing, farming, financial activities and property development. CGT at 20 percent is payable on sale of EMI shares unless participants have held their options for 24 months and then they should qualify for Entrepreneurs' Relief and a ten percent tax rate and companies can offset the entire costs of the scheme against Corporation Tax.

The Centre responded to the Chancellor's EMI consultation last May, relaying members' views suggesting:

- Doubling the maximum employee numbers in qualifying SMEs from 249 to 500
- At least doubling the current £30m gross asset value limit on participation
- Removing the *working time* limitation (*increasingly irrelevant in a gig economy*) Changing the rules concerning joint ventures and majority controlled subsidiaries *Easing the requirement for qualifying occupations and
- Clarifying the rules about independence (*in particular Venture Capital backed companies*).

In addition, the Centre and others urged updating the rules for the **CSOP**, described as the "next best" tax advantaged discretionary option plan available to companies, despite it being inflexible. Private companies who outgrow EMI can find the rigidity of CSOP a real shock – some private companies with multiple share classes can't use CSOP at all, said Centre member the RM2 Partnership. "*This is really unfortunate given the cliff edge nature of EMI qualification, where the hiring of one employee (even on a part-time basis) can tip a company over from EMI qualifying to non -qualifying*," it added.

There had been calls from hundreds of gazelle-type entrepreneurs to extend the scheme to allow bigger companies to adopt EMI, or to continue participation in it once they grow beyond the current qualifying limits. A recent campaign to widen the scheme to accommodate more scale-ups was signed by hundreds of entrepreneurs, including the founders of Crowdcube, Starling Bank, Revolut and Wise. There is evidence that EMI participation helps to improve employee retention and talent acquisition while increasing productivity and team alignment.

The Chancellor had nothing at all to say about the two all-employee tax-advantaged share schemes - Save As You Earn (SAYE) and the Share Incentive Plan (SIP), which between them have more than 1.5 million participants and which need urgent updating too if they are to continue to bring meaningful benefits to both the employee and the employer.

Replicate success of US Esops in UK, urges Centre

US employees are on average *two and half times* more likely to participate in some form of employee equity ownership plan than their UK counterparts. This unwelcome statistic can be extrapolated from the latest numbers on US employee financial participation published by the California-based **National Center for Employee Ownership (NCEO)** "*Eliminating overlap, we estimate that approximately 32m employees participate in an employee ownership plan*," it said.

In the UK it is believed that only between two and 2.5m employees participate in employee equity schemes, though the fact that many are members of more than scheme – e.g. SAYE-Sharesave and the SIP – makes numerical precision difficult.

Since the US workforce comprises around 162m people, the percentage of US employees who participate in employee (stock) ownership plans of one kind or another is almost ***20 percent*** – or *one in every five* employees.

By contrast in the UK, where the workforce numbers around 32.5m, the up to 2.5m employee (share) ownership participants comprise only ***7.7 percent*** of the workforce, only *one in every 13* employees. Hence the huge differential in popularity between employee financial participation in the US and in the UK.

Part of the reason is that the US had a long head start on the UK in the all- employee share ownership stakes. In fact, it was ESOP Centre founder Malcolm Hurlston CBE who brought the concept to the UK from the US. However, the history does not entirely explain why the US is so far ahead, pro rata, of the UK in having taken employee share ownership to heart.

Mr Hurlston said: "The American culture is more entrepreneurial. At federal and state level, legislators work in a bipartisan way to develop it. We still have much to learn."

Another factor is that US companies who award more than 30 percent of their equity to their employees usually qualify for considerable tax benefits, so they are more incentivised to adopt all-employee stock ownership than their UK counterparts. Other factors at play include the greater degree of enterprise culture in the US, which tends to more easily convince US employees that it's worthwhile for them to participate in their employer's stock plans.

Accordingly the Centre is writing to the Chancellor, urging him to replicate the success of US Esops in the UK.

NCEO pointed out that a major US study conducted with the help of Rutgers University some years back showed that, over a five year period, on average US companies which had installed all-employee Esops registered a 3.2 percent higher rate of return on capital investment than peer companies which had not.

The Chancellor told parliament that *the lower rate of innovation explained almost all the UK's productivity gap with the US.* The amount UK businesses spent on R&D as a percentage of GDP was less than half the OECD average. That was despite the UK spending more on tax relief than almost every other country. "*Something is not working*" he said. "*So we'll reform R&D tax credits so that they're effective and better value for money. We'll expand the generosity of the reliefs to include data, cloud computing, and pure maths. And we'll consider, in the autumn, whether to make the R&D expenditure credit more generous. Weak private sector investment is a longstanding cause of our productivity gap internationally: Capital investment by UK businesses is considerably lower than the OECD average of 14 percent - accounting for fully half our productivity gap with France and Germany. Once the Super Deduction ends next year, our overall tax treatment for capital investment will be far less generous than other advanced economies. We're going to fix that. In the Autumn Budget, we will cut the tax rates on business investment and I look forward to discussing the best way to do that with businesses. People. Capital. Ideas – there are three priorities for business tax cuts this autumn,"* explained Mr Sunak.

He could beef up the Enterprise Investment Scheme (EIS), which like EMI, has a list of non-qualifying occupations, which could be eased.

NCEO said that there are 6,500 employee stock *ownership* plans covering almost 14m million employee participants in the US Although there has been a decline in the number of live stock *plans,* that has been offset by an increase in the number of employee participants overall.

Companies with Esops and other broad employee ownership plans account for well over half of *Fortune* Magazine's "*100 Best Companies to Work for in America*" list year after year. On the whole US Esop companies appear to be better run than their non Esop peers, though to some extent this might be a chicken and egg conundrum.

There are more than 4,000 US profit sharing and (to a much lesser extent) stock bonus plans that are substantially invested in company stock and are like ESOPs in other ways, said NCEO. In addition, it estimates that about nine million employees participate in plans that provide *stock options* or other individual equity to all or most employees. Up to five million participate in 401(k) plans that are primarily invested in employer stock. Up to 11m employees buy stock in their employer through employee stock purchase plans. Overall, employees now control about *eight percent* of total US corporate equity. Although other plans now have substantial assets, most of the estimated 4,000 majority employee-owned companies have Esops.

About two-thirds of US Esops provide a market for the shares of a departing owner of a profitable, privately-held company. Most of the remainder are used either as a supplementary employee benefit plan or as a means to borrow money in a tax-advantaged manner. Less than ten percent of these plans are in public companies. However, stock option or other equity compensation plans are used primarily in public quoted firms as an employee benefit and in rapidly growing private companies.

P&O sackings condemned

The Archbishop of Canterbury, **Justin Welby** condemned the sacking of almost 800 **P&O Ferries** employees by video message as *inhumane and completely unethical*. He said that ill-treating employees was a sin and that the 'extraordinary move' by their employer, **DPW (Dubai Ports World),** was cynically timed, when the world's attention was on the Ukraine war. Chancellor Rishi Sunak told BBC's Sunday Morning programme that P&O's approach was "*appalling in the way that they've treated their workers"*.

The Archbishop urged the government to prevent P&O from operating until proper consultation with independent oversight had been carried out and to protest to Dubai's rulers over the company's extreme interpretation of the widely despised, yet still legal, '*Fire & Rehire'* employment contracts.

The government was introducing legislation in parliament, as this issue went to press, to ensure that foreign-owned ferry operators with regular UK routes must pay their employees at least the minimum wage, which is £8.91 per hour for employees over 23 years of age. In addition, the proposed new law tightens the obligation of foreign flag operators to consult with relevant ministers and employees before major redundancies are announced. P&O was asked to reverse the sackings.

There was crossbench MP pressure to force all foreign owned companies which ***trade*** in the UK to comply with local employment laws, including the requirement to pre-notify – both the affected employees *with their unions* and the government - at least 45 days in advance of any intention to dismiss large groups of employees.

Ministers were shocked after P&O Ferries ceo Peter Hebblethwaite told business secretary Kwasi Kwarteng that it had done nothing wrong because the 786 sacked employees were employed by three Jersey-based arms of P&O Ferries and were therefore *exempt* from UK employment law provisions. However, Mr Hebblethwaite later admitted to a Commons committee that his employer ***should*** have consulted the relevant *trade unions* in advance about the plan to sack so many of their members. He told MPs that there was "*absolutely no doubt*" that under UK employment law the firm was required to consult unions before making the mass cuts. *"We chose not to consult, and we are, and will, compensate everybody in full for that*," he said. No trades union would have accepted P&O's job cutting plans, he added.

The PM told the Commons during PMQs: "*Under section 194 of the trades union and labour relations act of 1992, it looks to me as though the company concerned has broken the law. We will be taking action therefore, and we will be encouraging workers themselves to take action under the 1996 Employment Rights Act*."

Mr Johnson was partially correct, as under Section 194, firms are meant to notify the Business or Employment Secretary of State before they sack 100 people or more. However, employment lawyers pointed out that the law was changed in 2018, as part of the implementation of an EU directive. *Firms no longer need to inform the UK government about mass dismissals, but instead must tell the governments of the countries where boats are registered.* Eight P&O Ferries ships are registered overseas in countries including Cyprus and the Bahamas. "*The obligation to notify the government of P&O actions has not been breached as the competent authority for these foreign registered ships is the government of where they are registered. It would appear the government did not understand its own legislation when writing in the terms that it did to P&O*," said one lawyer scathingly.

A Department for Transport spokesman confirmed the legal change and added: "*The government is strongly committed to protecting UK seafarers and those who work in UK waters continue to be protected by National Minimum Wage laws despite the 2018 legal change*."

Separately, Nautilus International, the trade union for maritime professionals, has accused P&O Ferries of breaking UK law because it did not notify the relevant flag states of its decision to sack workers. It said under UK Law, P&O Ferries was "*obliged to provide 45 days' notice to the Cypriot authorities, and 30 days' notice to the Bahamian and Bermudan authorities. We believe the government must penalise P&O Ferries for their omission,"* said general secretary Mark Dickinson.

Labour leader Sir Keir Starmer said it was not illegal for international seafarers to be paid below the national living wage at UK ports and criticised the government for not banning the practice.

Mr Hebblethwaite said that the sacked employees were offered £36.5m in total with about 40 getting more than £100,000 each. Some employees are set to get 91 weeks' pay and the chance of new employment, and no employee would receive less than £15,000. Of the 786 dismissed former employees, 575 to date had "*taken steps to accept*" the severance packages on offer, he claimed. However, unions said the compensation package being offered was "pure blackmail and threats." The average hourly rate of pay for new P&O crewmembers would be £5.50 per hour, added Hebblethwaite, a rate which is way below the UK minimum wage. The company denied union claims that some Indian agency workers were being paid only £2 per hour to man the ferries as replacements.

DPW's egregious behaviour came as no surprise to the Esop Centre since the Dubai parent terminated all P&O's employee share schemes after DP World first acquired P&O Ferries in 2006. Not long afterwards, DPW sold off some P&O assets to Dubai World, its major shareholder.

Some readers may remember that P&O, formerly the *Peninsular and Oriental Steam Navigation Company,* was an enthusiastic supporter of employee share ownership and a Centre member when it was an independent company, but its new Dubai based owner was not interested in sharing his company's equity with anyone else.

The Centre urged successive UK governments to introduce a code of practice for foreign companies acquiring UK companies - to respect the corporate culture of their takeover targets, including maintaining established employee share ownership schemes.

Ministers did nothing because they did not want foreign acquirers put off by such conditions from buying UK companies and because at that time, 2006-2015, very few foreign private equity corporate acquirers were on the UK scene.

The issue is pressing as more than 40,000 UK supermarket employees have lost their share schemes due to recent takeovers at both Asda and Morrisons by Consortia each comprising at least one major private equity house, mostly based in the US. Once again, their new owners are not interested in sharing the equity with their employees.

There was widespread outrage after DPW management sacked the P&O Ferries staff by recorded video message, without any pre-warning or negotiations whatsoever. It sent security guards to force the British based staff to leave the ferries and be replaced by much lower paid agency staff.

Normally, failure to consult employees (*and their trades unions*) and ministers about mass redundancies can result in an award of up to 90 days' pay for each affected employee. This would be in addition to any awards made by an employment tribunal to individual employees for unfair dismissal. Each employee could, in theory be compensated for their actual losses up to a maximum amount of one year's gross pay. In the meantime, the company ought to pay statutory redundancy payments to any employees with more than two years' service, as well as payments in lieu of notice (*given that they did not serve them with actual notice of termination*).

There was a question as to whether the employment of the dismissed crew had transferred to the new crew provider under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (known as ***TUPE)***. By law, the new provider could be liable for the cost of the dismissals, although P&O may agree to assume liability for this and to indemnify the new provider. There are additional obligations to inform and consult under TUPE with awards of up to 13 weeks' gross pay per affected employee for failure to do so.

DPW is one of the world's largest port operators and is owned by Dubai's sovereign wealth fund, chaired by *Sultan Ahmed bin Sulayem*, who heads Dubai's customs authority. DPW paid a £270m dividend to shareholders in 2020, but, like many transport operators, it saw demand slump during the pandemic. Just months after the dividends announcement, it said it would cut 1,100 jobs after a downturn in bookings and claimed it was now losing £100m per year.

Spring statement disappoints share scheme world

The share plans world waited in vain for Chancellor Rishi Sunak to announce, in his spring statement, changes in the taxation of employee shares. On this occasion, he had other fish to fry. This time round, the Chancellor focused on cutting duty on fuel and on raising the threshold for paying NICs. He did not cave in to demands that the planned 12.5 percentage point rise in NICs from this month should be scrapped, as it was a key "*dedicated funding source*" for health and social care, so raising the annual payment threshold would sugar the bitter pill. Mr Sunak said that the NICs threshold would now go up by £3,000 from July, instead of the mere £300 he had announced earlier. It would match the Income Tax threshold, equivalent to a £6bn tax cut for 13m people – worth £330 a year on average. It was the single biggest tax cut for a decade. He said 70 percent of employees would have their taxes cut by more than they paid for the new levy. The increase in the NI threshold to *£12,570* (from £9,600) was a tax_cut for middle and high-income employees, explained Torsten Bell of the Resolution Foundation:

The same 1.25 percent health and social care levy applied to NI bills will be added to the tax levied on investors who get income from dividends, *but no threshold increase was announced for them*. From this month basic rate taxpayers will pay the dividends tax at 8.75 percent after the frozen annual exemption of just £2,000 in gains, while higher rate taxpayers will pay dividend tax at 39.35 percent.

The Chancellor had already announced that Income Tax (IT) thresholds would be frozen for *four years* and presumably ditto for the soon-to-be raised NIC exemption rate, so employee NICs and IT payments will tend to rise over the years anyway, due to *fiscal drag.*

He pledged that before the end of the current parliament, in 2024, for the first time in sixteen years the basic rate of income tax would be cut from 20 to 19 pence in the pound - a £5bn tax cut for 30m employees, pensioners and savers. However, the elephant in the room was the government's growing burden of repaying interest on the massive loans it had contracted to help fight the pandemic. "*In the next financial year, we're forecast to spend **£83bn** on debt interest — the highest on record and almost four times the amount we spent last year*," he told MPs.

Both the Institute for Fiscal Studies and the Resolution Foundation said that, as a result of the tax changes, a *median* paid earner getting £27,500 a year would be £360 worse off in the next financial year, while someone earning £40,000 would be £800 worse off. In addition: *Fuel duty was being cut by five pence per litre until March 2023 *Homeowners installing energy efficiency materials such as solar panels, heat pumps, or having insulation installed will not pay VAT on these purchases. *Shockwaves from the battles in Ukraine will cut UK living standards by *£2,500* per household, lead to more persistent inflationary pressure and slow the economy to a standstill next year, economists fear. Following the escalation of the West's economic measures against the Kremlin, forecasters cut their growth estimates for this year and 2023, and became gloomier about the outlook for the cost of living. Interest rates rose for the third time in four months as the Bank of England tried to plug the surge in the cost of living. The rise in base rate from 0.5 to 0.75 percent took interest rates to their highest level since March 2020, when Covid lockdowns began.

Consumer prices rose by ***6.2 percent*** in the year to February, up from 5.5 percent in January, based on the CPI (Consumer Prices Index) said the Office for National Statistics. That was the highest inflation reading in 30 years, as household budgets came under intense pressure. On a monthly basis, the CPI rose by 0.8 percent in February alone, the largest monthly CPI increase between January and February since 2009. However, using the alternative Retail Price Index (RPI), which the government is keen to bury, annual UK price inflation already had reached ***8.2 percent*** by February this year. The BoE predicted that annual CPI price inflation would reach eight percent in April and could hit *ten percent* in the autumn when the energy price cap rises again. Energy bills and transport costs were major factors in these price rises. Electricity prices have jumped by 19.2 percent in the last year, while gas prices were 28.3 percent higher. Thisfollows increases in the energy price cap in April and October 2021. Employee shareholders will see their bills soar again this month, when the price cap rises by *54 percent*. Average petrol prices were 147.6p per litre in February, compared to 120.2p per litre a year earlier. The average price of diesel in February 2022 was also the highest on record, at 151.7p per litre.Clothing and footwear prices had risen by almost nine percent and furniture and carpets by 13 percent in the year to February.

Floating mortgage and other credit repayment rates rose after the interest rate rise, further squeezing household budgets. Pensioners who still hold employee shares from their previous jobs will come under pressure to cash in their holdings in order to pay their rapidly rising bills.

This was sobering news for share scheme advisers and corporate share plan sponsors alike, which could delay some SAYE and SIP share scheme launches, as fears grew that some Eso participants would no longer be able to afford their SAYE monthly contributions, or their regular share purchases in the SIP. On the other hand, share option-based employee equity schemes, such as the Company Share Option Plan (CSOP) and Enterprise Management Incentive (EMI) for SMEs could expect to prosper to some extent. The **Centre for Economics and Business Research** (CEBR) said living standards could take their biggest hit since records began. Assuming sanctions on Russia would have a marked impact on global commodity prices and inflation, the CEBR said UK growth this year would be more than halved to 1.9 percent and ***zero*** next year, while, after peaking at ***8.7*** percent in spring, retail price inflation was expected to remain above seven percent until early 2023. "*As a result of higher commodity prices, we estimate that disposable incomes will fall in 2022 by 4.8 percent or £2,553 per household with a further fall of 1.4 percent in 2023,"* it said.

EVENTS

Centre fifth share plans symposium, **April 6**

There is still time to register – but do it **today** - for the fifth Share Schemes Symposium, which takes place in the London offices of senior legal member **Baker McKenzie** at 100 New Bridge Street EC4, on **Wednesday April 6.**

The speakers' presentations were broadcast as 20-minute webinars during March and the recordings were made available to delegates, together with relevant papers. At the live face-to-face debate and networking session on April 6 speakers will summarise the main points arising from their presentations before throwing the debate open to delegates.

- Panel One is dedicated to the new executive remuneration landscape.
- Panel Two is devoted to employee equity arrangements for SMEs.
- Panel Three will offer tips for successful share plan launches in 2022 and explore the use of employee benefit trusts internationally.
- Panel Four examines the impact of regulation

and governance on all-employee share plans.

Please review the event brochure for programme details.

Speakers include: Jeremy Edwards, partner and head of **Baker McKenzie**'s employee benefits group; Stuart Bailey, associate director, **Computershare**; David Craddock, director founder, **David Craddock Consultancy Services**; Arran Simpson, partner–tax, & Hannah Tipper, associate director-tax valuations, **Deloitte**; Jennifer Rudman, industry director-employee share plans & Kevin Taylor, client relationship manager-premier services, **EQ**; Catherine Ramsay, partner-equity incentives, **Gannons**; Rasmus Berglund, senior counsel, & Saba Palizi, senior solicitor, **Macfarlanes**; Andrew Nealey, senior manager-reward & employment & Elizabeth Bowdler, senior manager, **PwC;** Shervin Binesh, director corporate services, **Sanne**; and Elaine Graham, director & Matt Longson, assistant trust manager, **Zedra**.

*The **Esop Stars,** for outstanding achievements in covid times, will be presented during the reception at the end of the afternoon. All participants are welcome to attend.

Registration Prices: Delegates from plan issuer companies will be admitted free of charge. **Practitioners:** Members: £395 Non-members: £595 **Trustees:** Members: £330 **Non-members**: £530. There is an option to attend the live session remotely. *Prices to attend virtually are: Members: £300 and Non-members: £475 (please indicate if you would like to take this option when booking*). To join the 50+ plan issuers, share plan practitioners and trustees who have registered so far, please send your delegate name(s) and contact details to juliet_wigzell@zyen.com.

Share plans and trustees conference: May 13

Register now for this year's Centre *Employee Share Schemes and Trustees* conference, held in partnership, as ever, with **STEP,** (*Society of Trust & Estate Practitioners)* **Jersey** on Friday **May 13**. The Centre returns to the **Pomme d'Or** Hotel in St Helier for this live event. With the global reach of trustees and the boom in the establishment of employee ownership trusts, it has never been more important for share scheme sector and trustee professionals to attend such events.

The programme enables delegates to stay informed with the expert views and to enjoy the continuing education which Centre conferences and seminars offer. Don't miss this great opportunity to update your knowledge.

We are delighted to be joined by Jersey's Information Commissioner Paul Vane, who will give a keynote speech on data protection regulation.

Speaker presentations will cover *Catching up with HMRC and unravelling the mess left behind after Covid; recent developments in employee share schemes, including relevant Spring Statement announcements in the tax sphere; as well as legal, tax, and regulation updates.* The programme is drafted to provide relevant technical information, which we trust will be acceptable as counting towards your Continuing Professional Development or Continuing Competence. The presentations will run from 9:00am to 1:00pm (approx.) followed by a buffet lunch. **Tickets:** In light of the postponement of the Centre's 2020 Conference, we are holding our prices at 2020 levels: Esop Centre/STEP members: **£375** Non-members: **£480**.

You can reserve your place by emailing events@Esopcentre.com or call the Centre on +44 (0)20 7562 0586

Report: EOTs – The Good, The Bad and….?

In a second Centre webclave debate on the Employee Ownership Trust (EOT), David Pett, tax barrister at **Temple Tax Chambers,** proposed a string of refinements to the current regime. This followed January's webclave on EOTs, which focussed on the Chartered Institute Of Taxation (CIOT)'s proposed modifications to the EOT tax regime, for which there was general support and how best to make the EOT more effective from both the engagement and direct ownership perspectives. David had corroborated CIOT's allegation that in some cases, SME owner-founders seem more interested in getting relief from Capital Gains Tax, through selling their businesses to an EOT, than they were in establishing genuine employee ownership. Feedback from participants had suggested that there was more to talk about on this subject.

David said though the EOT was a growing success story, its existing structure did not easily allow for direct ownership by the employees, whose ownership of the business, through the trust, was

indirect. This did not permit them to benefit from the capital growth of the company unless and until it was sold, which rather defeated the original objective of establishing EOTs. Therefore, a mechanism was needed to facilitate the holding of actual shares by the employees, he said. For example, should the EOT legislation allow employee shares to contribute towards the required 51 percent controlling interest? Should such a change be restricted to shares acquired by EOT employees under a Share Incentive Plan (SIP), in which real shares were purchased and whose gains were not subject to CGT.

Extending any new rule permitting direct share ownership to EOT employees *after* they left the company could be more controversial. Whereas few would complain if leavers were allowed to hold onto their shares until they vested, being able to hold them for many years after they had left the company might result in administrative issues, especially when, over years, the number of ex-employees steadily mounted.

Another important question was whether the EOT legislation should allow job leavers to realise the pro rata value of their *share* in the trust, by selling it back to the trust. This happens in the US where it is the norm for companies to prepare for their repurchases.

Mr Pett asked: *How can EOT company employees benefit from growth in capital value when in the current regime they can only receive value when the company is sold? Are the companies for which employee ownership is most successful the ones where employees have some direct ownership? Is this, therefore, a good case for changing the regime?*

It was difficult to determine whether space had been left in a high percentage of EOTs for up to (say) ten percent of the total equity for all-employee share schemes. Fairly often, founder-owners would hang on to perhaps 20 or 30 percent of the equity themselves after selling – free of Capital Gains Tax - more than 50 percent control into an EOT. David Craddock, founder and director of his eponymous employee equity consultancy, who headed one of the virtual discussion rooms, said that EOT reform presented a good opportunity to develop profit-sharing. A very positive aspect of EOTs was their simplicity, he said. Chris Booker of **Deloitte** said the pandemic had changed the mindset of the employee equity sector and so he would rather see a positive response from the government to the changes to the Enterprise Management Incentive (EMI) scheme, as requested by the Centre.

MOVER & SHAKERS

On the Move

***Reporting Deadline**: Share plans or other arrangements involving employment-related securities or options, established during the past fiscal year, should be registered with HMRC in time for the necessary returns to be filed on or before **July 6** this year. For new tax-advantaged SAYE plans, Company Share Option Plans (CSOPs) and Share Incentive Plans (SIPs), late registration without proper excuse can mean only awards made from April 6 this year qualify for income tax relief. EMI plan registration and option grants must be reported to HMRC within 92 days of options being granted to qualify for tax advantages. In addition, an annual return should be filed by the July 6 deadline, including nil activity returns. Equity arrangements without UK tax advantages, such as overseas share plans with UK participants can be registered individually or included under a single registration. Some events outside a formal employee share plan must be reported and might need to be registered with HMRC as a 'plan' *(including one-off share awards, and acquisitions of shares or options on a change of control or other transaction*).

*Banking giant JP Morgan is acquiring Centre member **Global Shares** for €665m, making it one of the largest exits by an Irish fintech. The transaction, which is subject to regulatory approvals, is expected to close in the second half of this year. Global Shares is 40 percent owned by Motive Partners, a PE firm that specialises in fintech investments. It bought the stake in 2018 for $25m. JPMorgan will integrate the fintech into its asset and wealth management businesses. However, the company will remain headquartered in Clonakilty. Global Shares ceo Tim Houstoun said "*We are tremendously excited to partner with JP Morgan and to continue being a leading player in equity incentive services. Together we will accelerate the expansion of our business globally as well as the range of services we offer to our clients and their employees*."

*Just before last Christmas, Centre member **EQ,** formerly known as Equiniti, announced that it had been acquired by *Earth Private Holdings*, a newly incorporated company affiliated with **Siris Capital Group.** EQ is a leading provider of shareholder, pension, remediation, and credit technology, with more than 5,000 employees, supporting 36m clients and customers in 120 countries. Little noticed at the time, Siris had also acquired ***AST***, a provider of technology-enabled ownership data management, analytics and advisory services to US corporate

issuers, mutual funds and private companies globally. EQ would be combined with AST, said Siris.

City still heads European financial centres

The City of London has retained its crown as Europe's dominant financial centre as fears of a Brexit-induced exodus failed to materialise, reported *The Telegraph*. London came second only to New York in the latest global financial centres index, which is published by think tank **Z/Yen Group** and ranks the world's top 126 finance hubs. It takes into account not only financial services, but political stability, labour market flexibility, quality of life, infrastructure and innovation. The City comfortably beat rival European centres including Paris, Frankfurt and Amsterdam, which came respectively 11th, 16th and 19th in the table. Despite London's strong performance, the gap between it and New York grew since September, when Z/Yen last published its index. London's fintech offering has fallen behind Beijing and San Francisco, as Chinese and US hubs boosted their technology development. Z/Yen said: "*London's regulatory environment, anti-corruption regime and rule of law is reasonably good. However, the financial services industry and its regulation needs to focus more on the perspectives of individual consumers and beneficial owners of money/assets than on the providers of services*." The report highlights how the Square Mile steered its way successfully through the pandemic and the UK's withdrawal from the EU, relative to other financial centres. **Professor Michael Mainelli**, executive chairman of Z/Yen, said: *"The second half of 2021 saw a level of confidence in the world economy that we have not seen since the beginning of the Covid-19 pandemic. However, the pandemic remains an unpredictable variable, as does the effect of the Russian Federation's invasion of Ukraine*."

UK CORNER

Professionals drop Russian clients and close offices

Centre member law firms and accounting/financial consultancies moved quickly to suspend or close their Russian operations *sine die* in the aftermath of the Ukraine crisis. The banks too came under heavy pressure to close or suspend their activities in Russia, but London-based bank HSBC was an early hold-out against the trend. Wall Street lenders Goldman Sachs which had 80 local employees, said it was pulling out. JP Morgan,

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How to join: contact the Centre at esop@esopcentre.com or call the team on +44 (0)20 7562 0586.

which had 160 local employees in Russia, soon followed suit. US bank Citi severed its ties by closing its retail and corporate business operations in Russia (including branches in 11 cities, affecting more than 500,000 retail customers and 3,000 corporate clients in Russia).

Global mining company Rio Tinto was severing its ties with Russia, throwing into doubt an aluminium joint venture between it and Rusal, which was founded by Russian oligarch Oleg Deripaska. Oil and gas giants Shell and BP were both exiting tie-ups with Russian state-backed oil and gas firms. Tobacco giant Imperial Brands announced that it was suspending all its Russian operations, but rival BATS announced that it was staying on. Toyota, Honda, Nike, Apple, Exxon, Ford and Netflix said they were stopping their work in Russia, while Amazon said it had blocked deliveries to Russia and its ally, Belarus.

However, some French multinationals were refusing to play ball with the Russian sanctions campaign. The Church of England put pressure on French owned TotalEnergies over its decision not to cut business ties with Russia in the wake of the invasion. The CoE's investment funds said they would reconsider their shareholding in the oil & gas giant and asked it to urgently review its initial decision. TotalEnergies condemned Russia's aggression but had not withdrawn from Russia when this edition went to Press. TotalEnergies still holds a near 20 percent stake in the state-controlled gas producer Novatek. Meanwhile, Association Familiale Mulliez (AFM), owner of sports chain Decathlon and DIY chain Leroy Merlin, plus the supermarkets giant Auchan, which employs 41,000 in its 310 Russian stores, at first refused to axe or suspend its businesses there, but Decathlon finally bowed to intense international pressure to close its Russian stores. AFM's founder and *eminence grise* Gerard Mulliez aged 90 is even expanding some of his operations in Russia. About 35 of the CAC 40's top companies were still active in Russia in mid-March, claimed French media. Top lender *Société Générale* not only employs 12,000 Russian staff, through its Rosbank subsidiary, which offers retail banking, private banking and investment banking services, but it has at least £12bn out on loan to Russian businesses. It was continuing to do business throughout Russia, but Renault succumbed to public pressure to stop making the *Lada* in its Russian factories.

*Former energy minister Lord Barker finally resigned, after political pressure on him, as executive chairman of EN+ Group, the Russian mining company owned by Deripaska. The Tory peer, who was paid $4m a year for his services at

WHITE & CASE

EN+ Group, was helped on his way out by Defence Secretary Ben Wallace who said publicly: "*I think Lord Barker should explain why he works with people like Deripaska."* A major Russian company listed in London was hit by a boardroom exodus after the chairman and five other directors of Polymetal International quit the gold miner en masse. Polymetal said Ian Cockerill, who was its chairman, and all its independent non-executives had stepped down with immediate effect. The LSE suspended trading in the shares of more than 30 Russia linked companies with a combined market value of *£468bn*, according to the data company S&P Global. Three more Russian billionaires resigned from the board of the £17bn investment firm LetterOne after the EU imposed sanctions on its two biggest shareholders. UK-based Russian billionaire oligarchs Mikhail Fridman, LetterOne's founder, and Petr Aven, who between them own almost 50 percent of its equity, had their shares in the company frozen after they were hit with EU sanctions following the invasion of Ukraine.

Luxury retailers including Burberry, Chanel, Hermes, LVMH, which owns Louis Vuitton and Cartier owner Richemont closed stores temporarily. LVMH said it would continue to pay its 3,500 Russian employees despite its store's shuting down. Brands like Levi's and Inditex, the Spanish owner of Zara, announced that between them they too were temporarily shutting hundreds of stores in Russia. The US jeans firm said about half of its net sales last year came from Eastern Europe and Russia, but "*any business considerations are clearly secondary to the human suffering experienced by so many*". Marks & Spencer, Burger King, and hotel groups Marriott and Accor were restricted by complex franchise deals preventing them from shutting down their Russian outlets. The firms outsourced their Russian businesses to third parties and do not own the operations bearing their name. Collectively, they have almost 1,000 outlets still open in Russia. KFC closed its Russian restaurants *(though not its many franchise operations*) after McDonald's, Coca-Cola, Pepsi and Starbucks halted their operations. Swedish furniture giant Ikea closed 17 stores, although its

parent company was keeping its mega shopping centres open. Next closed its warehouse in Russia and turned off its website there.

*In response to Western sanctions, the Russian government was taking steps to retaliate against *foreign investors' rights* – weighing options from the nationalisation of assets to non-protection of intellectual property rights, warned lawyers *Morgan Lewis & Bockius*. Since February 24, more than *300* foreign companies have suspended or withdrawn from the Russian market. The Russian government and president are considering counter-measures aimed at companies leaving the Russian market. Some have already been adopted and more severe measures are expected to be implemented shortly. The government approved draft legislation on the *nationalisation of assets of foreign investors* originating from so-called "unfriendly states," which include all jurisdictions which imposed sanctions against Russia - the US, the UK, Canada, the EU, Switzerland, Japan, South Korea, Australia, New Zealand, and Singapore. Nationalisation would encompass the forced replacement of a company's management by "special external management" and the *subsequent sale of its assets*.

*The flow of City deals in general, including IPOs and M & A transactions slowed to a trickle, as advisers warned that the war in Ukraine had produced too much turbulence for companies to go ahead. Only nine M & A deals collectively worth £600m were signed off in the first week in March, compared to 36 deals collectively worth £4bn in the previous week, said *Dealogic.* It was the same story in the debt and equity markets, where only £41m was raised, well down on previous weeks. Pre-invasion, companies whose shares were traded in Moscow had turned to London to raise money through secondary listings. They ranged from state -backed oil and gas producers, Rosneft and Gazprom, to state-run banks VTB and Sberbank, to independent mining companies like Norilsk Nickel which have no state ownership. Even after the annexation of Crimea in 2014, Russian companies still raised an average of $1.8bn a year on the LSE between the 2014 invasion and 2021, or £14bn in total. In addition, last year Russian *investors* were involved in £260m worth of City deals, especially in the high-tech sector, up from £180m in 2020. A *naming and shaming* hunt began in the City to identify those VC companies which had relied on Russian investors, reported *The Telegraph.*

TRAVERS SMITH

Wartime LTIP performance condition guidance:

The war in Ukraine has led to higher energy costs and sanctions on economic activities, voluntary constraints on trade and energy sourcing and many companies' exiting Russia altogether. This economic impact on Russia is intentional and the economic impact outside Russia is an expected side effect**,** said Centre member **Damian Carnell,** founder and ceo of CORPGRO, the sustainable growth executive reward consultancy. In the UK, the **Investment Association** issued guidance regarding their expectations on Long Term Incentive Practice (LTIP), which can be summarised **as**: *The normal rule is that LTIP grants should be scaled back following a recent share price fall. The IA confirms that this rule still applies in full:* The IA's Principles of Remuneration state that grant sizes should be scaled back following a share price fall. IA members expect such an approach to be followed in the current circumstances. The IA differentiates the current situation from the COVID- permitted 6-month delay in setting performance conditions as follows: "*Many IA members will support a delay in setting performance conditions for LTIPs but only where the company receives material revenue or profits from their Russian operations AND the delay is clearly linked to the statements the company has made on: *the impact of the current situation; *the approach to management of their Russian operations; and *the overall financial position and performance.''*

The on-going macro-economic impact including the "increase in energy costs, should not in itself be a reason for delaying target setting" for new LTIP grants. '*Plainly it is sensible for companies to guide their investors on the impact of the current situation and related matters. That guidance should front run any investor communications related to executive compensation. It is reasonable to infer the same approach is acceptable where the revenue and profits in point relate to Ukraine, or a combination of war and sanctions impacted company operations; but shareholder consultation pre action is advisable*, 'added Mr Carnell.

ESG under attack

The movement of western businesses towards adopting more environmentally and socially acceptable strategies stalled abruptly after the

invasion of Ukraine, as the new ESG (environmental, social and governance) risk norms came under sharp attack.

Leading the ESG critics was Rupert Soames, grandson of Sir Winston Churchill, and ceo of **Serco,** which has defence contracts with the UK, US and Australia. He said that the events in Ukraine should remind investors of the ethical value of the UK defence industry. Mr Soames alleged that it was *anti-democratic of the ESG investing brigade to try and stop defence companies from bidding for contracts with democratic countries for managing nuclear weapons and other defence sources.* He claimed there was now a risk that ESG dominated investment funds could undermine Western armed forces. He said: '*I don't think that that type of investing has had an effect on the UK defence yet, but there's a threat it will. If you see what is happening to Ukraine, it's easy to see that military defences are a social good and have an inherent social value."* He accused opponents of defence and public order contracts of going against the will of democratically elected governments.

Ministers warned too that the growth of ESG investing criteria posed a "*fundamental risk to British sovereignty*," as Downing Street planned a charm offensive to improve the standing of arms manufacturers with the public.

The invasion of Ukraine had exposed the failings of asset managers and data analytics firms in their assessment of ESG risks, claimed a senior sustainable finance executive. The war had prompted some asset managers to stop new investments in Russia, while others said they would divest from the country when they were able to do so. However, Sasja Beslik, a sustainable finance expert, said the war had shown that ESG investors "*have failed*" by not managing risks associated with Russian investments before the latest invasion. Beslik said companies should have learned from Russia's annexation of Crimea in 2014, reported the *FT*. Most fund managers and ESG analytics firms "*did nothing*" eight years ago, said the former head of responsible investments at Nordea Asset Management. The "tragedy" in Ukraine had been therefore a "*warning signal*" for all those working within ESG in financial services, he said. Asset managers' over-reliance on ESG data analytics firms, such as MSCI and Sustainalytics, had become part of the problem, Beslik added. Most asset managers used third-party data and integrated it into their portfolios, with very few doing detailed analysis themselves, adding that what MSCI and other companies were doing had a "tremendous impact on asset managers" and the cost for their clients was "quite significant" if they had relied on the data for their Russian investments. "ESG data firms need to ask themselves what they have missed," he said, citing MSCI's decision to downgrade its ESG rating of the Russian government from B to CCC on March 8, saying: "This came eight years too late." Sustainalytics said it was reviewing its ESG risk ratings and country risk ratings "in light of the conflict in Ukraine" relating to both individual companies and the firm's methodologies. Beslik said ESG considerations related to Russian investments had "*nothing to do with morals. The promise of ESG is to manage the down and upside of risks and opportunities associated with the investments we make on behalf of our clients, including where they operate."* *Nest*, the workplace pension scheme set up by the UK government, made clear that its decision to end its Russian investments on March 1 was not made on ethical grounds. "*Nest isn't an ethical investor. We're a committed responsible investor that seeks to achieve the best long-term returns for members by operating a global portfolio and managing key ESG risks to the portfolio*," a spokesperson said. However, ***ShareAction,*** a lobbying group, said responsible investors needed to "go beyond managing financial risk" and "*take responsibility for the impact their investments have in the world. Investors do not operate in a vacuum. Decisions taken, or not taken, have an impact on the world around us. The truly responsible investor will be as concerned about the social and environmental impacts of their investments as they will be with making a financial return*," a spokesperson said. ShareAction stopped short of calling for a complete divestment from Russian entities beyond sovereign bonds and state-affiliated companies. Total divestment from all Russian companies *"could have negative impacts on Russian people while having little effect on the military or political regime*" it said.

*The EU's General Data Protection Regulation (GDPR), adopted by the UK too, was attacked as: "*tedious, bureaucratic and overly complex''* by *Telegraph* columnist Matthew Lynn, who claimed

that the system was costing UK businesses, especially SMEs, billions to follow to the letter. He cited findings by an Oxford University study that GDPR was significantly reducing the profits and sales of digital companies. "*It has turned into one of the worst pieces of legislation ever introduced,"* claimed Mr Lynn. EU officials had said that GDPR protected citizens through 'better, smarter regulation' but the Oxford study by Carl Frey and Giorgio Presidente found that on average it had reduced sales by UK tech companies by two percent and profits by eight percent. Mr Lynn urged the UK government to scrap GDPR unilaterally.

*Customers could be given refunds and executives denied their bonuses if water companies dump raw sewage into Britain's rivers without good reason, warned **Ofwat.** The water regulator announced enforcement proceedings against five water companies – Anglian, Northumbrian, Thames, Wessex and Yorkshire – in an investigation of how often they dump raw sewage into the river system. The companies could be fined up to ten percent of their turnover if Ofwat finds they have broken the rules governing sewage releases into rivers and the sea. Water companies are only allowed to dump raw sewage into rivers when there is serious risk of local homes flooding during severe storms. Severn Trent ceo Liz Garfield, who earned £2.8m in 2020, told *The Telegraph* that water companies previously had not done more to end sewage pollution of rivers because customers hitherto had not prioritised it. Pandemic-enforced WFH had changed customers' perceptions because suddenly they were far more likely to witness local river pollution themselves while on breaks from their home desks, said the former *newspad* employee share schemes Award winner. Severn Trent has promised to reduce post storm sewage spills to an average of 20 per year by 2025.

COMPANIES

*Employee share ownership doyen **Admiral** suffered a share price fall after revealing plans to pay shareholders a lower dividend than expected for last year. However, full-year profits rose from £608m in 2020 to £713m as a result of strong growth in its UK motor insurance division.

*The Cambridge based technology company **Arm** was making hundreds of staff redundant weeks after the proposed £31bn deal to sell the company to US rival **Nvidia** fell through owing to regulatory problems. Arm is planning to cut up to 15 percent of its worldwide workforce and most of the job losses, up to about 1,000 roles in all, will be in the UK and the US, it said. Arm employs more than 6,500 people worldwide, including 3,500 in the UK. Arm said: "Like any business, Arm is continually reviewing its business plan to ensure the company has the right balance between opportunities and cost discipline. Unfortunately, this process includes proposed redundancies across Arm's global workforce." Japan's SoftBank acquired Arm in 2016.

*More than *40,000 employee* shareholders' accounts in total have disappeared at **Asda** and **Morrisons** in recent months after their debt-laden takeovers by private equity. Their shares have been de-listed. Private equity-owned UK supermarkets were increasing prices by more than rivals, leaving customers wondering whether the buyouts of Asda and Morrisons will leave them worse off as inflation rips through the economy, reported *The Times*. The price of a basket of 18 staples has risen by 15.3 percent to £20.37 at Morrisons and by 13.6 percent to £18.08 at Asda. Morrisons has been the most expensive of the big four supermarket chains for six consecutive weeks in *The Grocer 33*, a widely followed industry survey that tracks the price of a weekly shop.

*Private equity companies **Bain Capital** and **CVC** are believed to have abandoned their pre bid interest in acquiring **Boots** the chemist from owner **Walgreens Boots Alliance** because they thought the asking price was too high.

***Entain,** which owns bookmakers Ladbrokes and Coral, announced finally that it intended to repay £44m to taxpayers, through the government, which the company borrowed last year during the pandemic to keep staff on furlough, rather than sack them.

*Patrick Drahi, the Swiss-based French-Israeli billionaire who has amassed 18 percent of **BT's** equity, has a big advantage in the strategy game as both his parents were maths teachers. The future of the British telecoms company is all about big numbers, in particular its *£60bn* pension scheme, which presents difficulties for any radical overhaul in BT's business which he may suggest this year.

*The **Financial Conduct Authority (FCA)** planned to increase salaries and recalibrate performance-related pay for its employees, who threatened to strike over pay. Under the terms of its new offer, which is designed to reward consistent performance, aid career development and close pay gaps, around 800 of its lowest paid employees will receive a salary rise of £4,310 to a new minimum pay benchmark. Other salary increases and performance-related pay will result in an overall increase of £5,500. In addition, staff who achieve their performance targets will receive salary increases of at least five percent this year and four

percent in 2023, while those who have not met their objectives will be given assistance to do so in the future. *From next year, discretionary cash bonuses will no longer be paid*. Final bonuses of this kind will be paid to the highest-performing employees next month. The new offer included higher pension contributions and flexible benefits. Ceo Nikhil Rathi ran into stiff resistance after he sent employees a letter, announcing that the FCA could not in all honesty continue paying staff semi-automatic bonuses in view of its serious regulatory failures, including Carillion, Patisserie Valerie and others. Before introducing its new offer, the FCA carried out an extensive consultation with 4,000 employees and its staff consultative committee to find out what was most valued. Recognising the new high-inflation environment, the regulator will pay those employees who are meeting their performance targets a one-off, back-dated cash payment equivalent to four percent of their salary in April.

*Around 25,000 employees of Newcastle-based bakery chain **Greggs** will share a £16.6m slice of its annual profits – equivalent to £1,506 each on average – the company announced, after a record pre-tax profit of £145.6m was unveiled. Long-standing ceo Roger Whiteside is to retire next month. He will be replaced by Ms Roisin Currie, currently Greggs' retail and property developer.

*Trust-owned **John Lewis Partnership (JLP)** awarded employees a three percent cash bonus, as well as committing to pay the voluntary living wage and implementing a wider pay rise. JLP, comprising the department store chain and *Waitrose* supermarkets, employs 80,000 *partners*. It axed its annual all-staff bonus payment last year for the first time in almost 70 years due to the pandemic. This year's £46m worth of reinstated bonus payments, based on three percent of employees' salaries, equate to one-and-a-half week's wages per employee. The retailer committed to paying all staff on lower pay grades the voluntary real living wage, which is £9.90 an hour outside London and £11.05 an hour in the capital. In addition, employee 'partners' will receive a two percent pay rise, which will cost JLP £54m. Its underlying pre-tax profit of £181m over the 12 months to January 29 was driven by lower costs and its highest ever sales of £4.9bn at its department stores.

Although JLP has probably the UK's first employee benefit trust, it does not award its employees any shares in its business. JLP chair Dame Sharon White said: "*With our partners, like the whole country, facing a cost-of-living squeeze, we believe that this is the right time to pay the voluntary real living wage, nationwide. We see continued uncertainty from global events affecting the economic environment, our customers, partners and society"*

***Kingfisher** recruiting: Josh Kowalczyk, talent acquisition specialist at Kingfisher is recruiting in the finance, legal, procurement, HR and supply & logistics sectors. '*Our Share Plans team is growing as Mike Emmett wants to recruit an experienced share plans administrator to join them in Paddington,"* he said: The retailer wants someone with in-house share plans administration experience and who has studied, or would like to study, for the ICSA qualification.

***Marks and Spencer (M&S)** ran into criticism after appointing Stuart Machin and Katie Bickerstaffe to be joint ceos, following the resignation of current ceo Steve Rowe. However, Ms Bickerstaffe, head of M & S clothing and home division, will manage the integration of the e-commerce and bricks and mortar operations, but will report to Mr Machin, who will run the M & S daily business. A retail industry source told *The Telegraph: "It's all very strange. He's ceo and she's co-ceo. He's running the business, so how can you be co-ceo then?"* Almost 40,000 M & S (mainly shop floor) staff will see their base pay increase to at least £10 an hour in April, as part of a new reward package announced by the retailer. Their hourly rate will increase from £9.50 to £10 throughout the UK, and from £10.75 to £11.25 in London. The new hourly pay rates are above the *national living wage,* which from April 1 rises from £8.91 to £9.50 for those aged 23 and older, and the 'real' *Living Wage*, recommended by the *Living Wage Foundation.* Sainsbury's increased its minimum hourly rate to £10 and Aldi raised its minimum to £10.10 some weeks ago.

*Ex deputy PM and former Lib-Dem leader **Sir Nick Clegg** was awarded £9.4m worth of stock together with promotion to head of *Facebook*'s global affairs division, at holding company **Meta**. His base salary is reportedly £2.7m per year.

*Taxpayers are no longer the majority shareholder in **NatWest** after it sold £1.2bn worth of shares in the banking group. NatWest bought the shares at 220.5p each, as part of an off-market purchase. The government took a majority stake in the group, formerly known as Royal Bank of Scotland (RBS), after bailing it out for £45bn in the 2008 financial crisis. Following this latest share sale – at a significant loss to taxpayers, as the 'breakeven' price is c400p - public ownership in NatWest group is now at 48.1 percent - down from 50.6 percent.

***Royal Mail Group** revealed that men are paid 1.4 percent more than women in its latest gender pay

gap report of average salaries paid to its male and female staff. The group, which employs 137,000 staff, reported that women represented 19 percent of the UK operational workforce and 32 percent of senior managers in 2021, with the latter increasing by one percent from 2020. When comparing mean average bonus pay, women's bonuses were 5.1 percent higher than men's. A total 97.9 percent of women and 98.4 percent men received bonus pay, an increase from 2020. About 11 percent of Royal Mail equity is in the hands of employees, mostly via their SIP.

***Shell** ceo Ben van Beurden's total reward rose by a quarter in 2021 to £6m, as the fossil fuel producer benefited from soaring energy prices amid calls for a windfall tax on energy companies. The FTSE100 company reported record profits during 2021, thanks in part to a gas price surge in the final three months of the year amid a rebound in demand for commodities as the global economy recovered from pandemic lockdowns. Van Beurden's compensation increase, to €7.4m (£6.1m) in 2021 from €5.8m (£4.9m) the year before, is in comparison to an average 4.3 percent earnings increase in the year to December for British people. Mr Van Beurden was paid *57* times more than the median Shell worker in 2021, according to the company's annual report. Luke Hildyard, a director of the left-leaning High Pay Centre, said: "*Shell's ceo rakes in millions and half their UK employees make well over £100,000. Oil and gas companies have argued that money for a windfall tax would have to come from their budgets earmarked for long-term investment. When they are paying out huge sums to wealthy investors and top earning staff that argument looks laughably weak.*"

*Phone network provider **Three UK** announced pay rises of up to 12.6 percent for its 2,500 retail staff. The firm said it had boosted their minimum hourly rates to £10.13 nationwide and £11.40 in London, backdated to January 1 this year. Performance-related bonuses averaging 25 percent of base salary will continue to be paid but Three UK said the increase in base pay meant more guaranteed money for retail staff. The phone network provider has more than 100 job vacancies in its stores.

*German investment firm **DWS** paid almost 600m to snatch **Stagecoach** from under the noses of **National Express**. The last-minute deal enabled Stagecoach founders Sir Brian Souter and his sister Dame Ann Gloag to cash in most of their remaining 25 percent stake in the FTSE250 company. The share prices of other listed public transport operators rose on the back of DWS's successful bid coup as other acquisitions were expected.

EOTs boom during pandemic

In spite of the pandemic, 2021 had shown the momentum for Employee Ownership Trusts (EOTs) had continued to gather pace, according to early results of an EOT Survey, created and tracked by the RM2 Partnership. There were at least *210* new EOTs (*four per week*) established in 2021, bringing the number of live EOTs to more than 700, it said. "*EOT Transactions are an elegant solution to succession planning and the challenges that owners have when selling their businesses. RM2 envisage a day when EOTs are a mainstream route to sell your business. Taking this into account we expect the total number of EOTs to motor past 1,000 later this year.*" said Richard Cowley, director of corporate finance at RM2. EOTs continued to be attractive as a tax-efficient exit route for business owners – because they could be arranged quietly and efficiently with a high degree of certainty and such deals could be structured to give fair value to the selling shareholders at the same time as protecting the company.

*Civil engineering business **Fitzgerald Contractors (FC)** transferred its ownership to an EOT. The company, which made a profit of more than £17.1m in the year to March 2021, was a subsidiary of Thomas Vale Construction until it was acquired by md Nick Coley in 2013. The move would give all 120 employees a stake in the business, said FC. Mr Coley and the board of directors remain in their current roles. It claimed that employee ownership would help to provide greater opportunities for staff to influence business decisions through the formation of an *employee council* and for succession from within the internal management team over the coming years.

*Scottish civil engineering contracting firm **Kilmac** is now employee owned, safeguarding the future of 130 employees' jobs. Based in Tayside with an annual turnover of £20m, the business has been sold into an EOT by its founders Athole McDonald and Richard Kilcullen. The two civil engineers said they planned to remain in their roles for the next three years.

*PR agency **Milk and Honey**, founded in 2017 by group ceo Kirsty Leighton, converted from an LLP to an EOT, which saw 52 percent of the agency's 27 staff become co-owners. Leighton said that the EOT was a much better legal structure because it allowed everyone who had been with the business for 12 months to become co-owners, rather than just a select few. "It was not straight forward and not a cheap decision," she said. "*All in all, it took us*

three months and cost us about £85,000. We were a business of 40 people across three geographies, so there was quite an amount of legal restructuring needed." Ms Leighton sold 55 percent of the equity and following a valuation of the business, these shares will be paid for, CGT-free, by the trust over the next ten years. "*That is the advantage to me as the former majority owner*," she said. "*For the team, they get a bigger legal say in the running of the agency, up to £3,600 annual profit share payment tax free for the British co-owners and a substantial windfall payment should we decide to sell in the future. Currently this is valued at around £180,000 per person, so well worth having."* Since the trust was established, Milk and Honey has expanded its team by 25 percent and has seen its *B Corporation* score, an ESG measure, soar from 87 points to almost double at 167, ranking it among the top five percent of B Corps globally.

Pensions

*Ministers confirmed draft legislation for single or connected employer Collective Money Purchase (CMP) schemes would come into force from August 1 this year, subject to parliamentary approval. In the government response to its recent consultation on the draft regulations, the Department for Work and Pensions (DWP) highlighted the plans as a "huge step forward", confirming it would lay draft regulations making the necessary consequential changes. Some changes to the regulations were made in light of industry feedback, confirming, for instance, the definition of *connected employer* had been re-drafted to be more in line with the policy intent. The authorisation and supervision of CMP schemes, often referred to as *collective defined contribution (CDC)* schemes, would be administered by The Pensions Regulator. Pensions Minister, Guy Opperman, highlighted the development as "the culmination of four years' work". He said: "These regulations will be a huge step forward in providing a major enhancement to the existing occupational pensions landscape and a *third way* forward between traditional defined benefit and post 2012 defined contribution schemes. By allowing pension scheme members to share investment and longevity risk and by ensuring that employers have predictable pension costs, CDC schemes will mean scheme members can be confident of an income in retirement that, whilst not guaranteed, will provide them with good value from the contributions they and their employer have made." He confirmed whilst the prime focus would remain on ensuring CDC was available for single or connected employer schemes from next year, the DWP had already begun engagement with interested parties to understand their proposals for *multi-employer* schemes. The update was highlighted as "*great news for Royal Mail, the Communication Workers Union and Royal Mail employees*", RM having been the first UK company to want to introduce a CDC scheme for its staff.

The legislative framework for CMPs was implemented in the Pension Schemes Act 2021. CMPs provide a third benefit structure - between traditional defined benefit (DB) and defined contribution (DC) schemes. While new in the UK, CMPs are widely used in other countries including Canada, Denmark and the Netherlands. Contributions are fixed and there is no guaranteed or fixed level of benefits. Instead CMPs 'target' an adequate level of index linked pension for life, but this is only an ambition. Benefits can be amended if circumstances, such as adverse economic conditions or increased life expectancy, occur. Even pensions in payment may be reduced. Essentially they are a sub-set of DC benefits with an extra level of guarantee and some sharing of investment and mortality risk among members. However, unlike DC schemes, members do not have individual funds in which they choose the assets in which they invest. Instead, as in DB schemes, all employer and member contributions, and investment returns, are pooled within a single fund meaning CMPs can access more long-term and illiquid investments, potentially providing better investment returns.

In praise of EBTs

Employers were acutely aware of the important role their top achieving employees played in ensuring a successful IPO and in candidate-driven job markets, so employers who failed to prioritise retention efforts during the pre-floatation planning phase risked seeing top performers explore better-rewarded opportunities elsewhere. A frequently used way to secure loyalty and commitment was through a well-structured employee incentive scheme, and the employee benefit trust (EBT) had become one of the preferred pre-IPO structures to achieve this objective, said corporate and fiduciary lawyers *Walkers*. Employers used EBTs to attract, retain and reward their most valued personnel and EBTs could form an essential part of an employee's compensation package. High performing staff members were given part ownership in the company through a share award scheme, aligning their interests with that of the shareholders. Companies in turn benefited from a more committed and motivated workforce with a desire for the company to succeed and do well.

Before *Listco* offered its shares to the public, the founders usually put aside between five and ten percent of its equity as a reward for the employees. These shares were then transferred into the EBT, typically established as a discretionary trust with a holding company through which the shares in the Listco were held. EBTs are very flexible and could be made bespoke through a set of rules dictated by the Listco. The beneficiaries were the eligible employees, the settlor was the company (which was excluded from benefit) and a professional fiduciary was appointed as trustee who was required to act in the best interests of the employees as beneficiaries. Companies regularly used restricted share units, restricted shares or options as employee awards, or a combination thereof. It was not easy for shareholders to forego up to ten percent of the value of their company, especially when many years of sacrifice and effort went into building the business. Employers were therefore hesitant to surrender immediately all the rights and interests attached to those shares, which was why EBTs had become such a popular tool. EBTs were flexible enough to allow the company to *delay* the transfer of full ownership and control over the shares to the employees according to a vesting schedule which typically spanned 5-10 years. By doing so, employees were locked in for the duration of the IPO without having rights to income, capital or voting until the shares vested. Employers were free to choose which employees were allowed to participate in the scheme, set the performance criteria which employees had to satisfy and determine under what circumstances shares lapsed or were forfeited.

Companies could specify how they wanted the scheme to be operated and often appointed members of their board (normally from finance and human resources departments) as scheme administrators to assist the trustees. EBTs could be used for a global workforce irrespective of the employees' location - a point particularly relevant in the digital sector, or where parts of the workforce were operating remotely.

In addition, assets held in an EBT were protected from creditor claims, so where the operating company owed third parties' money or was declared bankrupt, the EBT's assets were not available to pay the company's debts. The company could avoid potential conflicts of interest by appointing an independent person (usually a professional fiduciary) to act as trustee of the EBT, which provided a further assurance to employees that their equity awards were being properly managed. Where employees forfeited their shares, for example, by leaving before the end of the vesting period or by breaching the terms of eligibility, the EBT could act as an internal market to acquire those shares and re-use them for future incentives.

Recently there had been a shift towards *electronic platforms for the administration of trusts, particularly EBTs*, which could be fairly beneficial to employees. These platforms were set up so employees were directly engaged through a dedicated website or smart-phone app. Circulars on legislative updates and trustees' decisions on behalf of the EBT were instantly communicated to participating employees. Greater transparency on the management of the EBT was provided and the administration streamlined electronically.

Companies had set up their EBTs in Guernsey and Jersey owing to the fact that the islands were English-speaking, located in the same time zone as London, with close links to the UK and Europe, and were politically stable jurisdictions with independent legal traditions dating back hundreds of years, in addition to having well-established, mature trust industries with experienced administrators for the proper management of EBTs. Owing to their high level corporate banking system, Guernsey and Jersey provided a full suite of banking services to trading companies, holding and investment companies, funds and trusts including EBTs. While it was important to take tax advice before establishing a trust in the Crown Dependencies the islands offered clear tax advantages where the EBT was properly structured. Companies were encouraged to prioritise employee retention strategies during pre-IPO planning, as this significantly contributed to a successful float. EBTs were one of the most widely used employee incentive schemes due to their flexibility, tax efficiency, confidentiality and the ability for companies to retain a measure of control, added *Walkers*. The first esops in the UK were established linking an employee benefit trust to a profit-sharing trust, the former located in Jersey.

WORLD NEWSPAD

EU: The EU Council of Ministers agreed a general approach on a directive, initially proposed by the EU Commission in 2012, aiming to improve the gender balance among non-executive directors of EU listed companies. If enacted, companies would have to take steps to reach a minimum target of having 40 percent of non-executive director positions held by members of the under-represented sex, or 33 percent if all board members were included. Companies that failed to reach these

targets would have to apply clear, unambiguous and neutrally formulated criteria when appointing or electing directors. The next step as part of the EU legislative process will be negotiations between the Council and the European Parliament with a view to agreeing a common position on the proposed directive.

Finland: The directors of Aktia Bank voted to continue a long-term share savings plan to motivate Aktia's employees to invest in its shares and to retain them. Another plan objective is to align the interests and commitment of employees and management, to work for value development and increased long-term shareholder value. The plan comprises the share savings plan for *all* Aktia employees and a performance share plan for key personnel, AktiaUna PSP, which is based on share savings in the original plan. The main plan offers 950 Aktia employees the opportunity to save 2–4 percent of their salaries *(members of the group's executive committee up to 12 percent and selected key employees up to seven percent)* using this savings account regularly to acquire Aktia shares at a ten percent discount. Furthermore, the participants are further motivated by the granting of free matching shares against shares acquired in AktiaUna share savings plan after two years. The main condition for receiving matching shares is that an employee holds the acquired shares until the end of the holding period and continued employment at Aktia. The value of the matching shares available during the savings period 2022–2023 amounts to €2,800,000 upon the launch of the plan. At a recent share price of €11.52, this was equivalent to 240,000 Aktia shares. The final cost of the plan depends on the number of participants and shares acquired in the plan by the employees. In addition, 30 Group key employees, including the ceo and the executive committee, will be offered the chance to participate in the PSP. The potential reward from the performance-based part is based on the number of shares that the key employee acquires in AktiaUna share savings plan, as well as how well the performance criteria are achieved during the performance period. The performance criteria for the performance period 2022–2023 are the Aktia Group's comparable operating profit (60 percent) and net commission income (40 percent). The reward based on the performance period will be paid in five annual instalments after the end of the performance period in 2024, partly in Aktia shares and partly in cash. Shares received as a reward cannot be transferred within one year of the payment of the reward instalment. The value of the performance-based reward during the performance period 2022–2023 amounts to a maximum €3,950,000, or 340,000 Aktia shares. The cash reward earned based on the performance period will be converted into Aktia shares after the performance period and will be paid in five instalments after the end of the restriction period in 2024, partly in Aktia shares and partly in cash. The cash portion is intended to cover taxes and tax-related costs arising from the reward to the key employee.

***France:** The construction and materials group **Saint Gobain** issued 6.5m new shares to award to employees in this year's group employee savings plan, offered to most of its 180,000 employees in dozens of countries worldwide. The subscription price for participants was fixed at €45.19 for each share (nominal price €4) at a discount of 20 percent compared to the market reference price of €56.48. The new employee shares will be admitted to Euronext on May 11.

*The withdrawal from **Russia** by so many western companies in the wake of the war in Ukraine was a body-blow for *all-employee share ownership* in larger Russian companies. Many multinational foreign owned corporations and big Russian companies actively use share awards as long-term motivation for employees in Russia, said Baker McKenzie lawyers Sergei Zhestkov and Daria Podshivalova, in a recent article published by *Thomsons-Reuters Practical Law.* Explaining that *domestic*-sourced employee share plans are still a minority and are offered to employees by a small number of Russian-listed companies. Foreign-sourced share option plans are more common than domestic employee share option plans, which again are offered by only a few big Russian-listed companies. Although employers can offer share options to all employees, they are more commonly offered selectively to senior executives and executive directors, or to certain categories of Russian employees, e.g. sales managers in a certain product line, they added. However, in contrast to the UK SAYE-Sharesave scheme, the option exercise price in Russia must be equivalent to the fair market value of the shares at the date of grant, so no discount is permitted in share option schemes. The Russian tax code allows for the taxation of share options and other financial instruments both at grant and exercise. The tax base is determined by the fair market price of the shares, which is calculated as either the closing price of shares on the relevant exchange if the shares are publicly traded, or the amount of capital (net assets) divided by the number of issued ords (presuming no preferred shares are issued) if the shares are not publicly traded. In practice, the Russian tax authorities generally do **not** consider share options awarded under long-term incentive plans (LTIPS) taxable at grant, as the Russian Central Bank does not deem them to be financial instruments. Employees are not subject to social insurance contributions on their employee

shareholdings. In addition, Russia has share purchase, restricted share and restricted share unit (RSU) plans. It is feared companies who have pulled out of Russia will refuse to award any more employee shares or share options to existing local employees, most of whom, however, will continue to be paid for the time being.

Switzerland: Reminding investors to "*destroy and permanently erase*" evidence linking global investment bank **Credit Suisse** (CS) to loans issued to US-sanctioned Russian oligarchs for luxury items including yachts and private jets is ***'good housekeeping and good data hygiene'*** the bank said in its defence.

The gross credit exposure of CS to Russia is larger than first thought, including loans to Russian entities involving yachts and private jets. Sanctions placed on Russian businesses and individuals make it uncertain whether the bank will get its money back. Its collateral and financial hedges helped mitigate risk, so its net exposure is smaller. CS holds CHF195m worth of assets in Russia too, which could also be affected by sanctions. The bank said its risk exposure to Russia comprises mainly "corporate and institutional loans, trade finance activities, and derivative exposures," and sought to reassure investors that the bank had "minimal total credit exposures toward specifically sanctioned individuals managed by our wealth management division. However, CS *did* contact hedge fund managers and other investors asking them to "*destroy and permanently erase*" evidence linking the Swiss bank to loans issued to US-sanctioned Russian oligarchs for luxury items including yachts and private jets. "*I don't think we've ever had a request like this*," one investor who received the letter told the *Financial Times.* Credit Suisse claimed the request was common practice. "***Reminding parties to destroy confidential information is good housekeeping and good data hygiene****. The transaction and the request to non-participating investors to destroy confidential data are entirely unrelated to the ongoing conflict in Eastern Europe."* Group ceo Thomas Gottstein condemned Russia's action and insisted that the bank's exposure in relation to Russia was "well-managed." Gottstein indicated that the bank will comply with all sanctions imposed by the US, the EU, and Switzerland. CS slashed executive bonuses after suffering embarrassing scandals at Archegos and Greensill.

Swiss banks hold up to £162bn of Russian wealth in offshore accounts, estimated the Swiss Bankers Association (SBA), stating that Swiss banks hold between CHF 150bn – CHF 200bn of wealthy Russian client money, which is way more extensive than previously estimated. Mattea Meyer, co-president of the Social Democrats, called on Switzerland to clamp down on any cash belonging to Russians close to President Vladimir Putin and his government.

US: The **Securities and Exchange Commission** released its climate disclosure proposal, a potentially major expansion of the US public company reporting regime that would require climate-related disclosures in registration statements and annual reports and associated financial statements, reported Centre member **Linklaters**. As proposed, the requirements would apply to US domestic and foreign private issuer registrants and would require accelerated and large accelerated filers to obtain an independent attestation report covering, at a minimum, Scope 1 and 2 greenhouse gas emissions disclosure. This could be required as early as the 2023 fiscal year (in filings reported in 2024). The proposed climate risk disclosures are based in part on the Task Force on Climate-Related Financial Disclosure and the proposed GHG emissions disclosures on the Greenhouse Gas Protocol, which are already familiar disclosure standards for many issuers.

Send your share scheme stories to newspad
The Centre is always happy to publish in newspad stories from employee share scheme sponsor companies and/or their advisers about Eso schemes which have either matured, or launched recently. Readers like to know why specific schemes were launched, whether the main objectives were achieved, whether the schemes were financially successful and what the average employee participation rate was. Please email your share scheme information to newspad editor, Fred Hackworth, at: fred_hackworth@zyen.com for publication in the next issue.

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