

it's our business

newspad of the Employee Share Ownership Centre

Roadchef employee shares scandal raised in Parliament

The plight of long-suffering **Roadchef** employee shareholders is being raised in parliament. An Early Day Motion (EDM) has been signed in the House of Commons by eight MPs so far – Paul Farrelly (Labour), Fiona Bruce (Conservative), Jim Shannon (DUP), Jonathan Edwards (Plaid Cymru), Alan Brown, Martyn Day, Chris Law and Chris Stephens (all SNP).

They are calling for a parliamentary debate over the Roadchef scandal in which the original 600 employee Esop participants were deprived of their shares almost 20 years ago with little or no compensation.

Centre chairman Malcolm Hurlston CBE has accepted an outline proposal from Roadchef trustee's advisers – lawyers Reed Smith – to hold a joint meeting with the Centre in the House of Commons this autumn about trustee risk, in the wake of the Roadchef Esop scandal.

Meanwhile, it emerged that total legal costs of the employee shareholders' fight for justice will exceed £3m, of which £2.4m was spent on preparing the court case and seeing it through to victory in January 2014.

However, it took another year for Tim Ingram-Hill to reach a compensation sum agreement with the Roadchef EBT1 trustee and a further two years to date trying to determine who gets what percentage of the pot, whether the payments will be taxed and when actual payments could finally be made.

The trustee has been invited by *newspad* to say when it will be able to give a firm date for the distribution of the compensation to these mostly low-paid employees who worked for the motorway services station group. However the trustee explained through its legal advisers that it was bound by court-imposed confidentiality rules.

By parliamentary convention, MPs are only allowed to use a single sentence in which they can set out their grievance and call for remedial action. Their EDM said: "That this House supports the development of employee share ownership, as such schemes reward loyalty and hard work and give employees a stake in their company; commends the Roadchef Employees Benefit Trust, established by ceo Mr Patrick Gee in 1986, to give employees at Roadchef Motorway Services a John Lewis type scheme in such locations as Watford Gap, Strensham, Clacket Lane, Stafford, Killington Lake, Taunton Deane, Magor, Sandbach and

From the Chairman

Much praise for the robust approach of HMRC in the Rangers case. From our view point the episode besmirched the EBT acronym and potentially employee ownership as a whole to such an extent that many trustees sought to rename it. In the Roadchef case the virtue of HMRC is less clear but the sad case of the aging and dying beneficiaries cries to high heaven and there is a Gordian knot to be cut. At least all-party parliamentary interest is adding to the pressure. The Centre has been in touch with all of them and made complimentary contributions to their local papers. You may be proud of newspad. Fred Hackworth has led the chase when others have been bored or silent. Our future depends on the fragrancy of what we do not just the legality.

Malcolm Hurlston CBE

Hamilton; notes with concern, however, that his successor Tim Ingram Hill paid £10m to HM Revenue and Customs (HMRC) as tax on Roadchef share sale proceeds of over £26m, which he obtained in breach of trust; believes that these funds, and its interest belonged to the trust, as the High Court ruled in 2014; agrees that this is a serious issue for the beneficiaries, many of whom were low-paid catering and cleaning staff, some of whom have sadly since passed away; and calls on the government to review HMRC's position on this issue to ensure that, to the extent HMRC has the discretion to do so, that the trust's money is repaid, so that 4,000 Roadchef beneficiaries can receive their just entitlements, of which the High Court has already found they were wrongly deprived."

Original Roadchef employee shareholders have kept in touch with *newspad*, which is the only UK publication to run regular updates on their long battle for full compensation. "We the original 600 employee shareholders should be given priority in the distribution – we should be paid our compensation first," said one.

As *newspad* revealed months ago, the criteria governing the proposed division of the finally agreed compensation sum seem bizarre, to say the least:

- Qualifying employees (the 600) who were members of the Roadchef Esop up until 1998 are to get 61 percent of the net compensation collectively.
- Non-qualifying original employees (those who either refused to join the Esop, or who were ineligible) are entitled to a further nine percent.
- Lastly, an astonishing 30 percent of the compensation pot is earmarked for more recent employees, who number more than 3000 – those who were never even participants in the original Esop!

No-one involved in this case – which is a dark stain on British justice – is prepared to explain on record why more recent Roadchef employees should qualify for any compensation at all.

Nor has the High Court explained why various gagging orders still apply to this case, which was supposedly settled by Mrs Justice Proudman’s ruling in January 2014.

She ruled that: “A transfer of shares from one Employee Benefit Trust (EBT) to another (EBT2) was void because the trustees of the transferring EBT did not properly consider the criteria for the exercise of their power and the transfer was made for an improper purpose. *Roadchef (Employee Benefits Trustees) Ltd v Hill & Anor [2014] EWHC 109 (Ch) (January 29 2014)*.

Litigation funding company, **Harbour**, which funded the Roadchef court case (when nobody else would), said: “The claimants were what might be considered more typical candidates for litigation funding, in that they were the trustees of a trust with severely depleted assets with no ability to self-fund complex legal proceedings. The case was successful at trial, with damages awarded exceeding £26m. The defendant appealed but settled prior to the appeal hearing, making a substantial payment to the claimants. Actual claimant costs were £2.4m (a budget change of 118 percent from the original £1.1m). The actual case went on for four years (with a trial lasting 16 days).

“The claimants lacked litigation experience. This is not a criticism, in that the majority of people litigate only once (if that), but we should have identified the need for greater assistance and support from the legal team in helping the claimants to make key decisions throughout the course of a major case.

“Because the claimants were trustees, our funding arrangements required court approval. This should have been dealt with at the outset of the case, rather than at the end as actually occurred. We now have considerable experience of securing court approval for funding wherever it is required, in multiple jurisdictions.”

Harbour is the sole investment sub-adviser to Harbour Advisers Cayman Ltd and Harbour Litigation Cayman Ltd, the investment advisers to the Harbour Funds. Team members have advised predecessor

funds that date back to 2002. Harbour operates globally from offices in London and Hong Kong.

In parliamentary written answers in March and April this year, Jane Ellison, then financial secretary to the Treasury, refused to give specific answers to questions from Labour whip Jessica Morden about:

- representations made to ministers on behalf of the Roadchef Employee Benefits Trust
- the Judge’s voiding of the employees’ shares transfer and subsequent sale by Ingram-Hill and her finding of a breach of fiduciary duty
- rejecting beneficiaries’ request for a meeting with Chancellor Philip Hammond.

The ex-junior Treasury minister, who lost both her seat and her job in the recent general election, said that, where appropriate, the repayment of tax or duties, was a matter for HMRC. Treasury ministers did not generally consider the implications of individual court cases unless, on advice from HMRC, such cases had wide and significant implications for the UK tax system. No such advice had been received from HMRC in this instance, said Ms Ellison.

PM’s executive reward reforms shelved

There is growing speculation that the prime minister’s flagship policies to reform boardrooms and curb ‘excessive’ executive reward may be shelved for two years and possibly even abandoned.

Promises to give shareholders an annual binding vote on executive reward and make companies publish pay ratios between ceos and average employees have been sidelined, according to ministers, who briefed journalists anonymously.

Similarly, a pledge to increase employee representation – by forcing big companies to appoint a representative from the workforce (as opposed to a seat on the board) in order to reflect their views – now seems buried in the permafrost.

Another Conservative manifesto plan which looks doomed was for the new government to review the use of share buybacks, with a view to ensuring these could not be used artificially to help senior executives hit incentive performance targets and inflate reward levels. Buybacks can do that if widely-used performance measures, such as earnings per share and total shareholder return, are calculated without appropriate corrections for any shares bought back during the performance period.

Sure enough, there was no reference to any of this in the PM’s legislative programme for the next two years, as revealed by the list of new government bills. Measures to reform remuneration were left out of the Queen’s speech, after the PM was forced to water down her legislative agenda following the unexpected loss of her overall parliamentary majority.

News that Mrs May’s corporate reforms had been dropped was made public through a ministerial ‘plant’

in *The Sunday Telegraph* – the house newspaper of the Tory Party. A government source said the manifesto promises had not been discussed once in the month since the election. Yet improving corporate governance, including regulating extravagant executive reward, had been a focus for Mrs May, who published a green paper on the topic last year.

The departure of Nick Timothy – Mrs May’s former co-chief of staff credited as being the “driving force” behind the reforms – was cited as part of the reason for the change of emphasis in Number 10. The inference to be drawn is that perhaps Mrs May’s heart was never 100 percent behind these proposed corporate reforms, despite what she said in Birmingham a year ago, when she opened her campaign to become Conservative Party leader.

Ministers say the new post general election parliamentary arithmetic – despite Theresa May’s £1bn life-support deal with the Northern Irish DUP – means that the plans cannot now be implemented. A cabinet minister said: “There is no way it can get a majority in the House of Commons.”

newspad warned of this possibility in last month’s issue, when we said: “However, all of this looked to be up in the air following Mrs May’s failure to secure a working majority of MPs. The question is: could most of these plans be enacted by regulation, rather than by legislation? There was no immediate guidance on whether or not the minority government would proceed in the near future with the proposed reforms of executive reward.”

CENTRE EVENTS THIS AUTUMN

Share schemes for SMEs: Thursday September 14

The next SME employee share schemes conference, jointly organised by the **Esop Centre** and the **Institute of Directors**, will be held at the offices of **Travers Smith** in London on **Thursday September 14 2017**. This one-day event is designed for small businesses and their advisers who are considering introducing an employee share scheme, or who want to develop existing plans. The event will be chaired by Centre chairman Malcolm Hurlston and speakers will include: Mahesh Varia, Travers Smith; Robert Postlethwaite, **Postlethwaites**; Liz Hunter, **Mazars**; David Craddock, **David Craddock Consultancy Services**; Catherine Gannon, **Gannons**; Nigel Mason, **RM2 Partnership**; Colin Kendon, **Bird & Bird**; Stephen Woodhouse, **Pett Franklin**; and Garry Karch, **RM2 Partnership**. Members interested in attending this conference should contact Daniel Helen at events@esopcentre.com or call 020 7239 4971.

Guernsey share schemes and trustees seminar: Friday October 6

The annual Guernsey share schemes and trustees

seminar, organised by the **Esop Centre** and the **Society of Trust & Estate Practitioners**, will be held at the St Pierre Park Hotel in St Peter Port on **Friday October 6 2017**. The annual half-day seminar is an industry-leading networking and learning opportunity for all those interested in employee share schemes and EBT/EOT/Esop trusteeship.

The programme is currently being finalised, but the following speakers are confirmed: Alison MacKrill, **STEP/Appleby**; David Craddock, **David Craddock Consultancy Services**; Elaine Graham, **Zedra**; Paul Malin, **Haines Watts** and Graham Muir, **CMS**.

Prices: Centre / STEP members: £375, Non-members: £480

Book and pay by Thursday August 31 to secure one of the following early bird discounts: 50 percent off a third delegate place, OR 10 percent off total.

To register, please email the name and email addresses of all delegates to events@esopcentre.com or call 020 7239 4971.

World Centre Awards 2017: Tuesday October 31

The World Centre for Employee Ownership’s sixteenth awards reception and dinner will be held at the **Reform Club**, in London’s Pall Mall, on **Tuesday October 31 2017**. This annual shop window event brings together members and guests – representing UK and international plan issuer companies and their expert advisers – to recognise the best in employee share ownership. This stylish black-tie event is the perfect way to celebrate the year with clients, colleagues and peers. Both individual and group tickets are available. **Table of ten*: £1,800 + VAT**
Member: £195 + VAT; Non-member: £270 + VAT.

*Tables of ten can only be purchased by Centre members. To purchase tickets, please email: events@esopcentre.com or call 020 7239 4971.

Nominations are now open for the World Centre Awards 2017. These awards recognise the achievements of companies which offer broad-based employee share plans and hold up best practice models for other companies to follow. Applications will be reviewed by two judges, experts in the use of employee equities, together with Centre chairman Malcolm Hurlston. Each category winner receives a framed certificate, which is presented to the winning teams at the dinner.

Categories:

- Best all-employee international share plan*
- Best all-employee share plan+
- Best financial education of employees
- Best share plan communications
- Best use of video communication
- Best use of technology
- Most creative solution

Visit the World Centre Awards 2017 webpage for further details, including descriptions of each award category, www.esopcentre.com/event/awards-2017.

* In a company with more than 5,000 employees and participants in at least three countries. +In a company with fewer than 5,000 employees and participants in no more than two countries.

Entries should be made using our secure online application form and the deadline for receipt is **Friday September 1**.

***BI share schemes Symposium: Thursday-Friday, November 16 & 17,**

The Esop Centre will hold its second British Isles employee share schemes symposium at **White & Case's** offices in **Old Broad Street, EC2**, on **Thursday & Friday, November 16 & 17**. The Centre is calling for more speakers and reviewing new topic suggestions for the 14 planned half hour slots. This event will be chaired by Centre chairman, **Malcolm Hurlston** who will deliver the opening address. The speaker line-up already includes: **Professor Len Shackleton**, of the **Institute of Economic Affairs**; **Colin Powell CBE**, adviser to the **Government of Jersey** on Brexit; **Damien Knight** of **MM & K**; **William Franklin** of **Pett Franklin**; **Garry Karch** of **RM2** and **Nicholas Greenacre**, supported by **Tom Hickman** and **Helen Levendi**, all from **White & Case**.

- *The programme to date covers:*
- Are all-employee share schemes worth the effort?
- *SAYE v SIP v CSOP: which of these tax advantaged all-employee schemes is most suitable for quoted companies?*
- All-employee share plan design & case histories; how can companies improve take-up rates?
- Executive compensation – *is top pay good for all?*
- Corporate governance – *an idea out of control?*
- Data privacy in the employee share plan world
- Employee Share Plans & Investment
- Accounting for share schemes - the threat of ingenuity
- The taxation of international employee equity schemes
- The Employee Ownership Trust - *how far can it go?*
- Crown dependencies and Brexit; what's to fear? what's to learn?

Delegate **Robert Scallon**, director of trade & finance at **Thales (UK)**, a French multinational electrical systems and defence company, plans to intervene during the open debate on behalf of non-French employee shareholders, who stand to lose their holdings if their French accounts have been inactive

for ten years or more. The Eckert law came into force in January last year. It strengthens the property rights of savers, but defines when the state can seize inactive bank and other investment accounts. Mr Scallon said: "I am concerned about the impact of the Loi Eckert on non-French employee-shareholders. After ten years of 'dormancy' the shares are sold and funds transferred to the *Caisse des Dépôts et Consignations* (CDC), the investment arm of the French state. The custodian of the shares (not options) is required to send an annual communication to last known address in Years 5-10. The company may feel it is not their problem, as the dormants are ex-employees and pensioners and the contract is between the ex-employee/pensioner and the custodian. The ex-employees have changed address/company/country/spouse and then forgotten or lost their UserID and Password to access their online share accounts." **FONDACT**, the Centre's Eso partner in France, believes that there are 450,000 such accounts holding €900m worth of shares, a fair proportion of which may be in the UK.

Practitioner **speakers** pay **£290** for admission to the symposium, which includes a buffet lunch and a drinks reception. Trustee speakers will pay **£230**, while plan issuer *speakers* will not be charged, so that advisers can team up with clients in joint presentations.

Either speak to one of the stated issues above, or suggest your own topic, but act now, as slots are filling up fast. You may present a paper, or use slides. Presentations should include opportunity for interaction within the time slot. Please send your speaker proposal to Fred Hackworth at: fhackworth@esopcentre.com.

A programme outline can be downloaded from:

www.esopcentre.com/event/. **We look forward to receiving your speaker bids.**

Delegate prices: member practitioner: **£415**, non-member practitioner: **£625**, member trustee: **£330**, non-member trustee: **£500**, non-member plan issuer: **£75**. All attendance fees are subject to standard VAT. You can register as a **delegate** by sending an email to: britishisles@esopcentre.com.

The Centre thanks White & Case for hosting this event.

MOVERS AND SHAKERS

On the move

*Centre member **Equatex** appointed **Frances Mancktelow** to its Swiss team as account director. Frances has more than 30 years of experience in the financial services industry, most recently as client relationship director with Computershare. Her vast experience includes working on several major technology transformations of the share management infrastructure, as well as the structuring and

implementation of complex client solutions. As an active participant at many industry events, Frances has regularly presented on panel discussions alongside clients and advisors. She has built solid relationships with industry contacts and experts, having managed a country-wide team with several top UK and International clients. Frances said: "I am delighted to join the dynamic and passionate team at Equatex and I am very much looking forward to working with the teams in both Zurich and London." Frances will be based in the UK and can be contacted on +41 (0)44 403 6202 or frances.mancktelow@equatex.com.

***Graham Muir** is now head of employee incentives and employment tax at **CMS Cameron McKenna Nabarro Olswang LLP**

***John Daughtrey** joined Centre trustee member **Ocorian** as corporate services business development director having previously held the position of head of employee services, business development, at Equiniti Group. John was appointed to specifically support Ocorian's strategic growth plans and service offering in corporate services and employee benefit trusts. John worked at Equiniti for thirty years and was responsible for client acquisition and developing Equiniti's global share plan strategy.

*Centre Awards guest **Mick McAteer** has been appointed to the new Financial Services User Group of the European Commission, brexit notwithstanding. The group represents to the Commission the views of small - including employee - shareholders as well as consumers of financial services. The Centre is looking to give employee shareholders an opportunity to express their views to Europe.

In a report this week Mick assessed the value of the City on behalf of the TUC. You can read it at <https://tinyurl.com/y8rvbay7>. Mick concludes "Large parts of the financial system are working well and the City does contribute a huge amount to the economy and society. But, set against that, the City may still represent a serious risk to wider economic resilience. Perhaps more importantly for the economy in the long term, the City is just not very good at some of its primary resource allocation and asset management functions". Most employee shareholders would have better tales to tell than the generality of fund investors.

Acquisitions

*Centre member **Capita** said that it would sell its successful asset services businesses to Oz based **Link Administration Holdings** for a cash free, debt free price of £888m as the outsourcing group looked to raise cash. Capita's asset services division includes administering Eso plans, EBTs, share registrations, share option valuations, share plan health checks, trusteeship and share dealings after plan maturity. It provides shareholder services to 1,300 UK

companies. Link provides outsourced administration services to Australian companies, particularly pension funds, share registries and trustees. Upon completion of the sale, after the deduction of transaction expenses, including a £17m one-off pension contribution of £72m, the net cash proceeds will be used to reduce indebtedness.

*Centre trustee member **Estera** announced the acquisition of **Headstart** a specialist corporate and trust services business, based in Luxembourg. **Farah Ballands**, ceo of Estera, said: "Headstart brings with it a great team of experienced professionals, led by mds Christophe Gaul and Manuel Mouget and a reputation for exemplary client service that is very much aligned to the values of our group. This acquisition paves the way for expansion into Luxembourg, one of world's most important jurisdictions for funds and corporate work, while broadening our existing offering in corporate, fund and trust services." The transaction was due to complete on July 31, following which the business was being rebranded under the Estera name. For further information please visit estera.com.

*Centre member trustee **Ocorian** is to purchase **MAS International**, an independent fund administration and corporate services provider. MAS Int. operates in Luxembourg and Mauritius in addition to representation in the US. The transaction is subject to regulatory approvals, but should complete towards the end of this year. This purchase will mark the next stage of the progressive trajectory for Ocorian, following the MBO and successive rebranding of Bedell Trust in 2016. All staff from MAS's administration and corporate services business will join the combined operation to support and build client relationships that are at the core of this acquisition. The two French entities are excluded from this transaction and will continue to operate independently. Terms of the agreement are not being disclosed. Nick Cawley, ceo of Ocorian said: "This transaction will further strengthen our position as a leading global provider of fund administration and corporate services complementing our real estate and private client services. The acquisition is consistent with Ocorian's evolution and commitment to continued international growth in leading jurisdictions."

***Wells Fargo** is selling its shareowner services business to **Equiniti Group**, the leading UK provider of share registration and associated investor services, for £176m. The sale is subject to regulatory and Equiniti shareholder approvals and customary closing conditions before it can go through, but the transaction is expected to be finalised by the end of March 31, next year. **Wells Fargo Shareowner Services**, a division of Wells Fargo Bank, provides shareowner services in the US, including stock transfer agent, corporate action, and investment plan services to more than 1200 public and private companies across the US. As part of the transaction, more than 400 WFSS team members are expected to transfer to Equiniti. Since listing in October 2015, financial technology

provider and Centre member **Equiniti** has flown under the radar of many investors despite its share price rocketing more than 60 percent during the following 20 months. Equiniti provides back office software taking care of regulatory and compliance issues, payroll solutions, fund administration and employee share registration for the majority of the FTSE 100 and many smaller firms. Stripping out the expected slowdown in sales of public sector pension administration software, organic growth was a healthy 6.8 percent last year. Last year the company boasted 100 percent client retention.

UK CORNER

HMRC sends multi-million EBT abuse tax demands

A large tax bill is being sent to the liquidators of soccer club Rangers' former owners, Murray Group, for £47m, which was *lent* to players, managers and directors between 2001 and 2010, after the Supreme Court ruled in favour of **HM Revenue and Customs** (HMRC) in its fight against the Scottish club's use of employee benefit trusts (EBTs) to reward players with tax-free loans.

HMRC had argued the payments were earnings and should be taxable. The court's decision is not expected to have any financial impact on Rangers itself, as the club is now owned by a different company.

However, tax experts warned that there were likely to be serious consequences for businesses that used the elaborate schemes, after a unanimous verdict handed down by five Supreme Court judges.

In addition, there may be calls from other Scottish soccer clubs for the return of more than a dozen trophies which Rangers won during this period – partly, it will be argued, by having attracted top players by means of an illegal payment scheme.

Payments made via EBTs were agreed in side letters, which were separate agreements to employment contracts and were hidden from the taxman and the football authorities. Lord Hodge and four fellow judges agreed with HMRC's contention that any payments made through EBTs should be considered taxable income, rather than as loans.

The ruling is a major victory for HMRC in its attempts to recoup tax from players who benefited from the loan scheme and from clubs which ran these EBTs and similar schemes, which were the subject of a crackdown in legislation enacted in December 2010.

It means that HMRC can send a large batch of Accelerated Payment Notices (APNs) to the accounting and/or legal representatives of soccer players and to their clubs. APNs give the recipients only 90 days in which to contest the outcome of the case or pay up in full.



HMRC is expecting to recoup tens of millions in lost tax and NICs payments from companies and others who sought to maintain that loans made to sports stars and others were not earnings.

Those English soccer clubs which used similar EBT schemes are nervously waiting to see how soon APN demands drop into their letterboxes. Some have sought legal advice in the wake of the shock ruling. A settlement opportunity in light of the 2010 legislation ran out in July 2015 and so they and their advisers could now be liable for major sums.

Some players and ex-players who were 'incentivised' through the EBT loan schemes now face ruin when HMRC's back tax and NICs demands arrive.

Two tribunals in 2012 and 2014 had previously found in Rangers' favour, but the Court of Session found in favour of HMRC after an appeal in 2015. Liquidators BDO were then allowed to appeal to the Supreme Court in London as the ruling has implications for future cases. The Supreme Court unanimously dismissed RFC's appeal and ruled in favour of HMRC.

HMRC warned: "This decision has wide-ranging implications for other avoidance cases and we encourage anyone who has tried to avoid tax on their earnings to now agree with us the tax owed. HMRC will always challenge contrived arrangements that try to deliver tax advantages never intended by parliament."

In a written judgment, the judges said: "The sums paid to the trustee of the Principal Trust for a footballer constituted the footballer's earnings. The risk that the trustee might not set up a sub-trust or give a loan of the sub-trust funds to the footballer does not alter the nature of the payments made to the trustee of the Principal Trust. The discretionary bonuses made available to RFC's employees through the same trust mechanisms also fall within the tax charge as these were given in respect of the employee's work. Payment to the Principal Trust should have been subject to deduction of income tax under the PAYE regulations."

The EBT scheme was administered by the Murray Group, then majority shareholder of the Glasgow club, from 2001 to 2009. In February 2012, Rangers, which was then run by Craig Whyte, went into administration over a separate tax debt and the tax authority rejected a creditors' agreement in June of that year.

The Supreme Court decision concerned the Murray Group companies, including the liquidated company RFC 2012, and not the current owners at Ibrox. The result means the creditors of RFC 2012 will receive less money from the pot collected by liquidators BDO, as HMRC will now be owed more money.

Former Rangers chairman Sir David Murray said he was “hugely disappointed” with the verdict, which he said ran counter to the legal advice provided to Rangers FC. He said: “It should be emphasised that there have been no allegations made by HMRC or any of the courts that the club was involved in tax evasion, which is a criminal offence. The decision will be greeted with dismay by the ordinary creditors of the club, many of which are small businesses, who will now receive a much lower distribution in the liquidation of the club, which occurred during the ownership of Craig Whyte, than may otherwise have been the case.”

*HMRC acted in a way that was “conspicuously unfair as a matter of procedure” in issuing accelerated payment notices (APNs) having previously agreed to postpone the payment of tax, but there was no abuse of power, the High Court decided in a recent judicial review. Mr Justice Charles said that when exercising its discretion to issue an APN, HMRC should have considered the fact that it had previously agreed to postponement of the tax. But he said that it was clear that the UK parliament had intended to change the position as regards payment of tax so that HMRC had “a power to effectively reverse the existing agreements and promises made by them”. The taxpayers’ unfairness arguments were outweighed by HMRC’s arguments regarding the clear intention of parliament when introducing the APN legislation, he ruled.

APNs were introduced in 2014 and give HMRC power to require payment of tax upfront, before a dispute about the efficacy of a tax scheme has been settled by the courts. One situation in which APNs can be issued is where a tax scheme has been notified to HMRC under the Disclosure of Tax Avoidance Scheme (DOTAS) rules.

“I am sure the man on the street will find this a difficult decision to understand when HMRC has been found to have not acted correctly but nonetheless HMRC walk away with a victory due to what many will consider a technicality,” said Steven Porter, a tax disputes expert at **Pinsent Masons**. “The Court’s decision that HMRC’s approach ignored the principles of good administration and was therefore unlawful should be good news to taxpayers in a similar position. It is extremely unfortunate that HMRC argued and convinced the Court that even if they were wrong the claimants shouldn’t win because, if HMRC had considered the matters they should have, they would still have decided to issue an APN,” Mr Porter said.

Mr Dickinson and others received loans from an

offshore trust under a ‘contractor loan’ scheme, which had been notified to HMRC under the DOTAS rules. HMRC argued that they were subject to income tax on the amounts loaned, rather than the loans being taxed as benefits in kind, which would have resulted in a much smaller tax charge. Following an appeal, in February 2014 HMRC agreed to postpone the tax until the liability was resolved by the First-tier Tribunal. However, in 2015 HMRC issued APNs, requiring the disputed tax to be paid, before the issues were resolved by the tribunal.

The **Employee Ownership Association (EOA)** is compiling a report which will make recommendations to the government about how best to support the growth of employee ownership in privately-held companies. The EOA believes that more employee ownership could improve the UK’s poor productivity and improve corporate governance. “We continue to uncover more evidence on the potential of employee ownership to answer some of the UK’s burning challenges: uneven distribution of wealth, the productivity gap and growing the nation’s SMEs and independently-owned business community,” said EOA ceo, Deb Oxley. “In order to create solid evidence about when and how employee ownership occurs and what benefits it delivers, we need to capture the insights and accounts of employee ownership from EO businesses of all sizes and in all sectors. These findings will be published this autumn in a report outlining the potential of employee ownership and its contribution to UK productivity growth and corporate behaviour,” she said. The EOA held oral evidence sessions across the UK, the feedback from which will be incorporated into its final report along with the results from written evidence.

The top 50 employee-owned businesses in the UK recorded combined sales of almost £23bn last year, with a ten percent median increase in operating profits, said the EOA. The same companies recorded a six percent year-on-year increase in productivity, compared to 3.4 percent average UK productivity growth over the same period. UK employee-owned businesses account for 200,000 employees in 300 businesses, with almost 70 percent being in either professional services or manufacturing, according to a survey by the Universities of Durham and Leeds. The EOA is asking EO businesses for information about their productivity, performance and corporate governance practices, plus the reason they made the transition to employee ownership and how they fund their arrangements. It is asking business advisers for information about the services they offer to employee-owned businesses. Share plans and incentives expert Graeme Standen, of Centre member **Pinsent Masons**, said: “The EOA defines employee-owned businesses as those totally or significantly owned by their employees. This is clearly an interesting group, and one that has been growing in numbers and

attracting more support, especially after the efforts to promote employee ownership led by the Lib Dem side of the 2010-2015 coalition government.” Meanwhile the Centre is intensifying its focus on Employee Ownership Trusts which acquire businesses for fair value.

Eso & wolf pack hedge funds

Stricken building contractor **Carillion** was saved by the bell as the government suddenly announced that it had won shared contracts worth £1.4bn to build tunnels on the HS2 railway line. Carillion faced demands to launch an emergency fundraising after issuing an unexpected profits warning. That sparked a collapse in its share price from 192p on Friday July 7 to just 55p on July 13, wiping almost £600m from its stock market value. Its share price death spiral was fed by 18 hedge funds and a relentless share shorting campaign – feeding off what, at one stage, looked like a corporate carcass. When the ‘hedgies’ closed their positions, they had profited collectively by an estimated £140m. This prompted calls from some commentators for intervention by the **Financial Conduct Authority**, which has launched probes into different areas of financial markets, but not yet into the vulnerability of UK plc to hedge fund wolf packs. Regulators tightened the rules in 2008, forcing hedge funds to disclose when they had taken out a short against a company but, crucially, it ruled that the practice wasn’t abusive. Stock shorting has long been a controversial and shadowy activity in the City, though corporate treasuries sometimes need to ‘lend’ their shares for various reasons.

After the contracts awards by Transport Secretary Chris Grayling, Carillion’s share price rebounded by 20 percent to 69p, but fell back to just 60p each a week later.

So what’s this got to do with employee share ownership, you might ask? Plenty, at least indirectly, is the answer. Share price shorting can create mayhem in any major company where one or two of its all-employee share schemes are about to vest. Supporters of shorting, where hedge funds borrow shares in the belief they will fall, so they can sell them back cheaper, argue that such ‘investing’ helps sort good companies from bad ones. Critics complain that by hunting in packs, shorters are profiting hugely by driving weak companies into the ground. Their activities appear to have clouded prospects for Carillion’s 50,000 employees worldwide and the 28,000 members of its pension fund, not to mention its many suppliers and creditors left exposed by the share price meltdown. Carillion’s share schemes are administered by **Equiniti**. Participants include the 4,000 employee ‘partners’ of former green energy company **Eaga** who joined Carillion’s share schemes after the Eaga Partnership Trust was bought by Carillion in 2011. The Trust failed in its objective of converting its entire holding into Carillion shares, at

the time of the takeover, because the employee shareholders insisted on a part cash and part shares solution. Carillion is a casualty of a public procurement crackdown in Whitehall, which is reducing its reliance on large outsourcers to less than five percent of recent public sector contracts. Fresh analysis showed that Carillion’s debt was set to balloon to almost £700m in the first half of this year, and its pension deficit could more than double to £800m. Ceo Keith Cochrane said he was conducting an urgent review of the business, including the possible sale of some divisions.

Reminder

HMRC’s extended deadline for the submission of share schemes returns for the tax year 2016-17 expires on **August 24. Daily penalties will apply after that date, so make sure that you get your returns in before midnight on that day.** HMRC was forced to extend the companies’ reporting deadline after further major technical problems affecting its seemingly jinxed Employment Related Securities (ERS) online service, which prevented returns being submitted for an extended period. Basically, the relevant data submitted by share plan sponsoring companies hadn’t been registered properly by the HMRC online reporting system, but the IT glitch had been solved, it said.

Record dividends for SIP shareholders

Investors are enjoying a stellar 2017, with rising share prices being supplemented by record-breaking dividend payments, new research shows. Shareholders in companies listed on London’s main market received £33.3bn in payments during the second quarter of this year, up 14.5 percent year on year, according to the latest analysis by Centre member **Capita**.

SIP shareholders receive dividends because employees buy the *shares*, whereas SAYE scheme participants are awarded only options to buy the shares at vesting, albeit at a discounted price.

The growth, which has come on top of rising share indices during 2017, is attributed to high special dividends and large gains because of movements in foreign exchange rates. After stripping out one off payments via special dividends, underlying receipts to shareholders rose by 12.6 percent. **Justin Cooper**, ceo of shareholder solutions at **Capita Asset Services**, said: “Shareholders can be thankful they had punchy special dividends and the weak pound in their corner, but improving profits have played their part. Exchange rate gains have come not only for big multinationals declaring dividends in foreign currencies, but for others with overseas operations, or export sales, supercharging their profits and so their dividends. The relative strength of the UK consumer, until recently at least and surging economic growth abroad has supported stronger dividend growth than we have seen

in some time. Even though the second half is going to be much quieter, investors can look forward to dividends hitting a new record this year.” Capita said that special payouts of £4.6bn were the second-highest on record for any quarter, owing mainly to a £3.2bn payment from **National Grid** on the sale of its 61 percent stake in its UK gas distribution business. Meanwhile, **Lloyds Banking Group** paid £357m as a special dividend, on top of a £1.2bn regular dividend.

More long-term share bonuses

Almost two-thirds of the UK’s biggest listed companies now require their top executives to hold on to share awards for at least five years, according to one of the world’s largest asset managers that has pushed to overhaul executive reward. **Fidelity International** said that 65 FTSE 100 companies now had five years or more holding periods for their long-term incentive plans (LTIPs) - up from 48 businesses a year ago and only four at the start of 2013, when it launched its campaign against short-term pay awards. Fidelity believes that lengthening the period in which executives are prohibited from cashing in shares granted in LTIP schemes better aligns management teams’ interests with those of investors. From 2015, it has been opposing pay plans put before it at agms if they do not include five-year shareholding periods. “We have long argued that longer incentive schemes would change corporate behaviour for the better, reducing the temptation to maximise short-term financial performance, and instead promote investment and growth,” said Dominic Rossi, its global chief investment officer. A number of companies, including tour operator **Thomas Cook** and cigarette maker **Imperial Brands**, have been hit by investor revolts over excessive pay this year.

Including the FTSE 250 index of mid-sized companies, 179 of the UK’s 350 largest listed businesses now have LTIP retention periods of at least five years, Fidelity said. European firms compare poorly when it comes to overhauling share bonuses, however, with the asset manager finding that just 45 percent of firms in the Eurotop 100 adopt the same policy. This falls to 31 percent when British companies are removed from the pan-European index. Mr Rossi said: “During the year to date, we have voted against 29 percent of FTSE 350 remuneration policies and more than 70 percent of the remuneration policies in France, Germany and Switzerland where we have been offered a vote.”

Executive reward

***Burberry** faced another tense shareholder showdown over alleged excessive executive reward. Its new ceo **Marco Gobbetti** was greeted by investors with another rebellion on executive pay as **31.5** percent of shareholders voted against the luxury fashion house’s remuneration report at its agm. The



protest from almost a third of investors came after shareholder advisory bodies the **Investment Association, Institutional Shareholder Services and Pensions & Investment Research Consultants (PIRC)** had urged investors to reject the package for outgoing Christopher Bailey and the awards that had been pledged to Julie Brown, the new chief financial officer. Ms Brown had already taken steps to see off a rebellion by handing back share options worth around £2.4m that she was entitled to as compensation for the awards she forfeited at **Smith & Nephew**, her previous employer. Sir John Peace, Burberry’s chairman, said on the sidelines of the meeting that Ms Brown had given up the shares because “she felt, given the circumstances, it was the right thing to do, and she was being socially responsible”. The chairman added that he believed that had Burberry not awarded such generous terms initially it would not have succeeded in recruiting the finance chief from the medical devices maker. Gobbetti is due to receive a £1.1m salary and an annual bonus that entitles him to up to 200 percent of his basic pay.

*The boss of one of the UK’s biggest energy companies, **SSE**, received a 72 percent increase in his annual reward, just weeks after arguing against consumers having their bills capped to save them £100 a year. Alistair Phillips-Davies, ceo of SSE, will be paid £2.92m in 2017 after receiving the maximum possible bonuses for leading a “robust performance” by the supplier last year. His increase is even bigger than the 40 percent extra awarded to the ceo of the British Gas owner, **Centrica**. Mr Phillips-Davies was paid £844,000 in base salary, largely unchanged from last year, but topped up by £25,000 in benefits, a £910,000 annual bonus – more than double that of the previous year – and a long-term incentive payout of £644,000. He was given £502,000 for his pension as well. The retail arm of SSE increased its profit margin on householders from 6.2 percent to 6.9 percent in the financial year 2016-17.

***Morrisons** suffered a major investor rebellion over its plans to bump up the pay of ceo David Potts, prompting the supermarket’s chairman to attack ISS, the investor lobby group. At Bradford-based Morrisons agm, more than 48 percent of investors voted against plans to increase the retail chief’s long term incentive plan (LTIP) award to a maximum 300 percent of base salary, from a 240 percent ceiling last year. As a result of other awards, Mr Potts will be eligible for a £5.3m total reward package, compared to the £2.8m he received last year. Shareholder advisory

groups had urged investors to vote down the pay report after arguing that the performance targets, such as free cash flow, had been reduced. ISS had said that the LTIP increase to 300 percent of salary was above the average 275 percent award ratio. Despite Mr Potts being widely respected for his turnaround of Morrisons, the move to raise his LTIP awards was controversial as it came on the back of a report by cross-party MPs urging them to be scrapped as part of an ongoing overhaul of corporate governance rules. However, the rebellion sparked a rebuttal of ISS's analysis from Morrisons chairman Andy Higginson: "We consulted widely with shareholders on the new remuneration *policy* which received more than 92 percent votes in favour, so we were surprised not to get a higher vote in favour of the directors' remuneration *report*", he said. "We fundamentally disagree with the ISS analysis of the performance targets. Not only does the board believe the targets to be significant and stretching, but the judgement on what the right measures are goes to the heart of rebuilding the business for the long term - striking the right balance between investment and continued outperformance." Morrisons' agm gave the adoption of the LTIP plan a 92.4 percent positive vote.

*Thirty-five top UK executives feature in a table of those earning more than £1m in the year ended March 31 2017, published by the **Labour Research Department**. Their combined remuneration packages came to £77.8m — an average of £2.22m each. Simon Borrows, ceo of the private equity and venture capitalist group **3i** topped the list with a package worth £7.54m, or £145,080 a week. Richard Harpin, founder and ceo of home emergency repairs firm **Homeserve**, received package on £4.26m. Year-on-year comparisons could be made for 32 of the 35 executives but only nine saw their total packages grow over the past year. The increases ranged from 412 percent down to 0.9 percent. All but two of the increases were well in excess of the rise in average earnings for the whole economy, which was running at between 1.8 and 2.4 percent. Martin Bennett, ceo of Homeserve's UK business and a group board member, topped the increases with a 412 percent rise taking him to £3.18m a year. Bennett received a £1m plus increase in his long-term bonus. Promotion to the top job of ceo at support service group **Babcock International** for Archie Bethel brought a 42 percent increase in his package to £1.85m. The total remuneration figure includes: basic salary, cash bonus, long-term share bonuses, golden hello, golden handshake, cash pension payments and a cash figure for other benefits that directors receive, such as use of company car, life insurance, private health benefits and housing allowance. Dividends received from their shareholdings in the company are not included.

COMPANIES

***Braemar Shipping Services**, a quoted provider

of knowledge and skills-based services to the shipping, marine, energy, offshore and insurance industries announced that the trustee of the Braemar Shipping Services Esop had released 5,179 ords of ten pence each to James Kidwell, ceo of Braemar and 4,000 shares to Grant Smith. The handover was made following the vesting, on May 22, of shares awarded to Kidwell and Smith at nil cost under the company's deferred bonus plan for year ended February 28 2014. Following this announcement, Kidwell held 145,249 shares, equivalent to 0.5 percent of the company's issued ords and Smith held 48,375 shares.

*Centre member US infrastructure and engineering group **CH2M Hill** has won a contract to manage the refurbishment of the Houses of Parliament, beating domestic rivals to the multibillion-pound deal. CH2M Hill, which has a \$6bn annual turnover and which employs 26,000 staff worldwide, provides consulting, design, construction and operations services for corporations and federal and local government

*Staff at fashion chain **Jigsaw** gained a £493,000 windfall under a new share scheme as profits jumped. The payout to staff is the first under an employee share ownership scheme introduced by ceo Peter Ruis, intended to spread the benefits of success. About 600 employees, who have been with the company for more than a year, were handed at least one share last year and received their payout on Christmas Eve, according to the company's recently filed accounts. The majority of staff now hold at least one share, each of which paid out a £400 tax free dividend. Ruis said: *'The whole concept is that you do 12 months and you become an owner in the business and your holding can increase over time. The effect has been very positive. If we do well, everyone is rewarded, not just one or two individuals.'* Ruis, a former executive at **John Lewis**, was drafted in by Jigsaw founders John and Belle Robinson in 2013. Total dividends paid, including a separate management scheme and payments to the founders, were £1.6m. Group sales rose eight percent to £95m. Profit at the UK division increased 11 percent to £6.2m.

***Patisserie Holdings plc**, the leading UK branded cafe and casual dining group, announced that an application had been made to AIM for a block admission of 2,626,666 ords of one penny each in the share capital of the company. This will be used from time to time to satisfy the issue of shares needed for the exercise of options under the company's employee share option scheme and LTIP.

***Pearson**, the world's learning company and Centre member, published its 2016 Sustainability Report, which highlights a continued vision for driving alignment between business and sustainability strategies. It promised to: *Publish gender pay details for Pearson's UK businesses by 2018 and extend its reporting on gender pay to cover its global operations by 2020, *Increase access to education, including by extending Pearson's partnerships with Save the

Children, Camfed, and Kiva, and launching the *Tomorrow's Markets Incubator* to enable employees to innovate new products for low-income and underserved communities and to *Foster employee learning and advancement with Pearson's online learning platform *Pearson U*, including a technology academy, to support the company's digital transformation.

*Chartered accountants **Price Bailey**, which recently added a seventh UK mainland office at Sawston near Cambridge, is an example of the increasing number of professional service companies to have installed all-employee share ownership schemes recently. Its core accounting and auditing services have all performed well, enabling further investment in the expanding range of specialist ancillary services. The firm claims its growth is due to investment in people, with initiatives in staff training and employee engagement including internal coaching, talent management programmes, *an all employee share scheme* and most recently the launch of 'Smart Working', its flexible working initiative. Price Bailey now has 350 employees.

*Senior executives at **Vue** cinema chain are in line for a windfall worth hundreds of millions of pounds as it heads towards a bumper sale or float. The top team, led by Tim Richards, founder and ceo, stand to share more than £400m from any deal. Vue's owners appointed investment banks **Rothschild** and **JP Morgan** to identify possible buyers, at the same time as making preparations for a stock market listing. The chain has a price tag of around £1.6bn. A handful of top executives are sitting on 27 percent of the company, making it one of the biggest deal bonanzas ever seen. The rest is in the hands of two Canadian pension funds, Aimco and Omers, which bought Vue in 2013 for £935m. It will be the *third* time management have cashed in. They made millions in 2010 when Vue was sold to Doughty Hanson, and again when the Canadians swooped. Richards, who started Vue with just a handful of cinemas in 2000, made £50m through the second buy-out. Today it has more than 200 sites, making it the sixth largest cinema operator in the world. Sales grew by nine percent to £773m last year. Vue's sale plans bring back memories of the float of **Merlin**, which triggered a share windfall worth hundreds of millions of pounds for 2,000 senior managers and long-serving staff. The City's most generous mass pay-day came in 2011 when **Glencore**, the commodities trader, floated

and 485 traders received average windfalls of £76m each.

Announcements under the MAR and Disclosure, Guidance & Transparency Rules:

AA plc announced purchases by senior executives of shares under its SIP scheme and the award of matching shares to same; **Barr AG** announced the purchase of SIP shares by several executives and the award of matching free shares to them on a 1:3 basis; **CVS**, one of the UK's leading providers of integrated veterinary services for small and large animals, said that 2,533 ords of 0.2 pence each were issued on July 3 to meet the exercise of employee share options by a former employee participant in the company's three year December 2014-17 SAYE Scheme. Following issue of the new shares, the company's total issued share capital was 63,906,444 ords with one voting right per share. CVS does not hold any ords in Treasury. **Headlam Group** announced that SAYE options had been exercised on its 2012 and 2014 schemes and that 20,858 ords had been transferred from treasury stock for Eso allocations. The **Jardine Lloyd Thompson Group** said that shares purchased by the trustee of its SIP scheme had been allocated to several executives and **Ocado** made SIP awards to senior executives

WORLD NEWSPAD

French state votes against Renault ceo pay

The French state, which owns 19.7 percent of **Renault**, opposed ceo **Carlos Ghosn's** remuneration for the fourth time at the car-maker's agm, a spokeswoman for the state's participation agency said. As a result, Renault shareholders approved Ghosn's €7m ceo salary by a narrow 53-47 majority. In July last year, Renault's board cut the variable component of Ghosn's pay package by 20 percent, which wasn't enough to satisfy the French government. The state's opposition adds to the tensions between Ghosn, 63, and French President **Emmanuel Macron** who, when economy minister, objected to the ceo's salary as well. Ghosn has chafed at the state's holding, which France boosted in 2015 against the company's wishes in order to secure extra voting rights. Macron told Ghosn about the move in a late-night phone call just hours before the news became public. Following last year's

WHITE & CASE



controversy on Ghosn's 2015 pay package, which the board kept in place despite shareholders' disapproval, France passed a law to require a binding say-on-pay vote on the current year's compensation.

Renault postponed its shareholder assembly from April to June to avoid holding the meeting and discussing Ghosn's reward level in the middle of France's presidential campaign. Renault-Nissan has no plans to introduce an *additional* compensatory bonus scheme for executives at the car-making alliance, Ghosn told shareholders. He commented after Reuters reported that alliance bankers had drawn up plans designed to channel millions of euros in extra, undisclosed bonuses to Ghosn and other managers via a specially created service company. "This is the document of a consultant who came to make some proposals," Ghosn said. "We are open to proposals, but that doesn't mean when we listen to an idea that we are going to put it into practice." The incentive plan had not been put to the Renault board or executive committee, Ghosn said, adding that no decision was expected any time soon on such a scheme. It drew criticism from investors already concerned about compensation, governance issues and an ongoing French criminal probe into allegations of systematic Renault diesel emissions fraud. The company denied any wrongdoing. Ghosn received a similar package from his other role as Nissan ceo, which he relinquished last April as he prepared to hand over leadership of the alliance, while staying on in one or more of his chairman roles. Ghosn, who has led Renault since 2005, announced that group revenues rose by 13 percent in 2016 to €51bn and operating margin was 6.4 percent versus 5.2 percent in 2015. Earnings per share and dividends were both up.

Brexit

Euronext boss Stéphane Boujnah warned that the UK will likely lose its battle with Brussels over euro-clearing, saying that a significant part of the \$1 trillion market is likely to relocate. Mr Boujnah, who runs the pan-European exchange, said that clearing trades denominated in euros will become an 'anomaly' in London after Brexit, with a shift away from the City the most likely outcome. Speaking before the European Commission presented a series of reforms concerning the market post-Brexit, he pointed out that between 40-70 percent of trading in

euro-denominated assets currently goes through London. That was fine before the UK voted to leave the EU, he said, but.. "It's normal that we should expect one way or another to have the relocation of a significant part of trading and clearing of EU denominated assets". The UK hosts some of the world's largest clearing houses, which act as intermediaries between buyers and sellers of financial assets, so if London were to lose its control over the market it would be a major blow. Politicians on the continent have called for the market to be relocated since last year's Brexit vote, with Mr Boujnah noting that "Brexit means Brexit in many respects, in particular in terms of euro-denominated assets".

Sumitomo Mitsui Financial Group became the third Japanese company in two weeks to unveil plans to open in Germany, to act as its EU hub following Brexit. The company, which has its European HQ in London, announced that both its main banking business and its investment banking division would set up subsidiaries in Frankfurt. SMFG said it was taking the step because it believed it "*could face future restrictions in certain services it provides*" after Brexit and that establishing subsidiaries in the German city would ensure that it "can continue offering banking services to clients with no disruption once the UK leaves the EU." What they are most worried about is the growing possibility that the UK fails to secure financial services 'passporting' rights for them to operate seamlessly across EU borders post Brexit. Sumitomo joined **Nomura** and **Daiwa**, two other large Japanese securities groups with big EU businesses based in London, in unveiling plans to open subsidiaries in Frankfurt, a process requiring applications for banking licences from the German regulator. Daiwa announced its move on June 22 and Nomura followed days later. Other major banks confirmed that they too are planning moves out of London ahead of the UK's exit from the EU.

Standard Chartered was in talks with regulators about making Frankfurt its European base and **Morgan Stanley** too announced moves to transfer up to 200 more City jobs to Frankfurt, which will become its post-Brexit European hub.

HSBC expects to switch 1,000 jobs from London to Paris as a result of the Brexit process. **Deutsche Bank** said it could move up to 4,000 jobs out of the UK - almost half its UK workforce. US mega-bank **JP Morgan Chase** reconfirmed that it is planning to move hundreds of bankers out of London - to Dublin, Frankfurt and Milan. Speaking to *Bloomberg News*, JP Morgan's head of investment banking Daniel Pinto said: "We are going to use the three banks we already have in Europe as the anchors for our operations. We will have to move hundreds of people in the short term to be ready for day one, when negotiations finish, and then we will look at the longer-term numbers." JPMorgan had already warned that the bank might cut up to 4,000 UK jobs longer term. It is in talks to buy a

Dublin office big enough to hold more than 1,000 employees. The Tory general election debacle has stiffened its resolve to move.

Barclays said it was preparing to double its staff in Dublin to counter Brexit risks to its European business. It is considering beefing up its Milan and Frankfurt offices too. Goldman Sachs confirmed it is to start moving hundreds of staff out of London before a Brexit deal is struck. Frankfurt, much to the chagrin of Paris, is the EU base of choice for major City banking groups worried by the implications of a Brexit which leaves the UK outside both the Single Market and the Customs Union.

Insurance giant **Standard Life** is creating an EU subsidiary in Dublin, with its chairman noting that the business “can’t take a chance” on the potential loss of financial passporting rights post Brexit as its £11bn merger with Aberdeen Asset Management hove into view.

UK share plan administrators and tax advisers, now have to grapple with the tax and regulatory implications of imminent mass job transfers out of the City, because most finance industry staff are participants in at least one – and often several - share or share options based incentive schemes.

Brexit beauty parade:

Accountants at EY said 59 out of the UK’s 222 biggest financial services companies had made statements already about moving staff to the EU mainland because of Brexit. Dublin is the top destination with 19 firms mentioning a possible move to the Irish capital. Frankfurt appears to be the second most popular destination, with 18 mentions in EY’s research. Luxembourg was third with 11 and Paris, which has promised bankers significant tax cuts as part of a major charm offensive by the new French prime minister, Édouard Philippe, was in fourth place. Xavier Rolet, ceo of the London Stock Exchange, forecast that Brexit could lead to as many as *100,000* jobs moving out of London long term.

The Bank of England had given banks a deadline of July 14 to formally notify its Prudential Regulation Authority about how they planned to mitigate Brexit risks.

“More than three months on from triggering of Article 50, we are seeing major financial brands put their contingency plans into action – over a quarter of the companies we track have suggested there will be potential changes to their London base as a result of Brexit,” said Omar Ali, EY’s UK financial services leader. “This process will only accelerate as firms finalise their submissions to the regulators on their Brexit plans.”

Research by the *Financial Times* identified 759 separate EU bilateral agreements with potential relevance to the UK which may need to be negotiated

just for the UK to ‘stand still’ after Brexit. The treaties identified cover trade with 168 countries in nuclear goods, customs, fisheries, trade, transport and regulatory co-operation in areas such as antitrust or financial services.

The exclusive \$100m a year pay club

Don’t be fooled by Tim Cook’s 2016 reported pay of \$8.75m (£6.75m), which ranked the Apple chief executive officer in the bottom third of all ceos in the S&P 500. Mr Cook, 56, actually took home \$145m, almost all of it from awards granted back in 2011. He’s not the only ceo of a publicly traded US company to cross the \$100m threshold for take-home pay, commonly referred to as *realised pay*. Reed Hastings, 56, of Netflix, reaped \$106m last year.

Take-home pay for the top 25 S&P 500 ceos who were in post during the last full fiscal year soared to a collective total of \$1.65bn. Ceos in the technology, healthcare and media industries dominated the list.

Take-home pay is the sum of the values of stock vested and options exercised during the fiscal year, along with cash from salaries, bonuses and perks. Companies typically grant equity to executives as incentives each year. Those awards are reported at their target values in the summary compensation tables of annual proxy statements.

Mr Cook’s 2016 take-home pay came primarily from the vesting of 1.26m shares, valued at \$136m, which were awarded after he became Apple’s ceo in 2011. About one-fifth of the shares were tied to the firm’s three-year total shareholder return relative to the S&P 500 Index. Shares of the iPhone maker gained 78 percent in the 36 months through the fiscal year ended September 28, placing it in the top third of the index. The remaining 980,000 shares vested solely on his continued employment. Cook has now amassed more than \$320m from vested shares of the 2011 award. His \$145m total take-home pay for fiscal 2016 also includes a \$3m salary, a \$5.37m cash bonus and \$377,719 in perks. In a 2015 interview with *Fortune* magazine, Mr Cook said he planned to donate his fortune to philanthropy.

Would Twitter be better off as an Esop company?

This is the question posed by *Fortune* magazine. “The argument for Eso is that it typically brings lower [staff] turnover, and greater employee loyalty, suggestions, innovation, and, on average, better firm performance. But it’s expensive. In a pointed discussion on this issue, CNBC reported that Twitter’s 2015 employee stock-based compensation was \$682m, or 18 percent of its revenue, more than any tech company with a market value of more than one bn dollars. Twitter’s employee share ownership programme could be overhauled using an Esop, vastly

it's our business

different than typical Silicon Valley employee share ownership plans, which give away a chunk of stock and stock options annually, diluting existing investors. An Esop is an employee trust that borrows money to buy the shares of existing shareholders or purchases new shares at the full market price. Because the federal government wants to encourage the idea, there are tax incentives for the company. If properly structured, an Esop could slowly buy out some of Twitter's large shareholders and potentially introduce a new form of employee share compensation that is less dilutive to other shareholders. The inventor of the Esop designed a consumer stock ownership plan that also makes credit available to consumers to purchase stock in companies where they are customers. Employee ownership could be transformed into a positive story at Twitter from a perceived burden on other shareholders. And it would be up to investment bankers to work out the details. Many Fortune 1000 companies have had Esops structured for them, so it is neither new idea nor unlikely," added the *Fortune* article.

Investors outraged

Pharma giant Mylan's Board was put through the wringer at its agm after powerful institutional investors were outraged by Mylan Chairman Robert Coury's \$97.6m total compensation in 2016—and a majority of Mylan investors voted against the drugmaker's 2016 compensation programme following controversy over prices for the company's EpiPen allergy treatment. The vote marked the second time that a majority of investors had rejected the company's reward programme since Mylan first held advisory votes on executive compensation in 2011. However, shareholders voted to approve all board nominees at the meeting in Amsterdam.

"The compensation committee and board of directors will carefully consider these results, as well as future shareholder input, as we continue our investor outreach and in designing our compensation programmes going forward," Coury said. The votes follow an effort by a group of investors to unseat some Mylan directors and reject the company's pay plan, and an unusually public spat between the board and the largest US proxy adviser on the same issues. The discord came after a public-relations firestorm over the \$600 price tag for Mylan's life-saving allergy drug EpiPen. While the pay vote was a rebuke of Mylan and its directors, its effect may be limited. Votes on compensation are merely advisory.

Four pension funds, including the California State Teachers' Retirement System and New York City Pension Funds, had urged fellow shareholders to vote

against Coury and five other board members up for re-election. Coury—the highest-paid executive in the drug business for 2016, according to FiercePharma research—racked up \$97.6m in compensation last year, including stock grants worth \$50m and a \$20m bonus, all at a time when his company was under fire for enormous price hikes on its *EpiPen* product and under investigation by Congress and federal agencies. In awarding that \$20m bonus, Mylan's board decided that Coury had exceeded its expectations with his "strategic vision," Mylan's "short- and long-term value creation for shareholders," and its \$7.2bn buyout of Meda, which was enacted last year.

Kenya:

ARM Cement maker's employees acquired a 15 percent stake in the company, making it one of the public listed firms with the largest employee ownership in Kenya. The company's latest financial statement shows that the employees acquired the stake last year when the cement maker added the UK's CDC Group to its list of shareholders. ARM, which makes the Rhino Cement brand, has 3,000 employees — giving each of them an average of nearly Sh1 million worth of shares based on the company's share price of Sh21.7 and making them some of the richest workers in Kenya. The actual value per worker should be much higher since not all staff participate in such schemes. ARM disclosed details of the Esop in its latest annual report, but does not indicate the price at which the shares were bought. The vesting period is not disclosed. The Esop scheme's part ownership of ARM has more than tripled from 4.13 percent in December 2015, an increase that came last year after the cement maker issued additional 111 million shares to the staff. ARM employees now own nearly the same stake as Amanat Investments — the investment vehicle of the company's chief executive Pradeep Paunrana and his family. CDC Group, with 42 percent of the equity in the cement firm, is the single-largest shareholder. Firms running Esops have traditionally offered staff shares at a discounted price to encourage their participation in the schemes, meaning the ARM employees may have paid less than Sh20 for every share they bought. Others have granted free shares to a select group of employees with outstanding performance, setting them up for major capital gains down the road. Listed companies in Kenya with Esop plans include oil marketer KenolKobil, HF Group, Equity Group and Barclays Bank of Kenya .

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

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