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# it's our business

newspad of the Employee Share Ownership Centre

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# WELCOME

## In this issue



***From the life president***

*As often, George Orwell was one of the first to spot the Prosper Paradox, highlighted in this column last month. He wrote in The Road to Wigan Pier: "The post-war development of cheap luxuries has been a very fortunate thing for our rulers. It is quite likely that fish-and-chips, art-silk stockings, tinned salmon, cut-price chocolate (five two -ounce bars for sixpence), the movies, the radio, strong tea, and the Football Pools have between them averted revolution." Swap the mobile phone for movies and the radio and modern gambling opportunities for the Pools and that is where we are now. Ideally it will create room for the next government to take action.*

*Meanwhile, we await Michael Mainelli's lord mayoralty in 2023. He is showing his commitment to our cause by taking on the executive chairmanship of the Esop Centre. This first president's column marks the supportive continuity of the Centre's founding chairman.*

***Malcolm Hurlston CBE***

## Centre executive chairman to be next Lord Mayor of London

Economist and Professor Michael Mainelli is to be the next Lord Mayor of London. Alderman Prof Mainelli is co-founder and executive chairman of the Z/Yen think-tank which promotes societal advance through better finance and technology and which operates the Esop Centre. The former scientist and author was chosen by the City of London's Court of Aldermen in a secret ballot. The Court agreed that Prof Mainelli should be supported for the Mayoralty – to commence in November next year - subject to an election at Common Hall. His will be a primarily a ceremonial role, maintaining and promoting the interests of the City and its citizens and attending a variety of engagements during the year. One of the key issues he intends to promote during his mayoralty is broad-based employee share ownership .

# Reform sidelined by PM election crisis

Employee share scheme reform later this year looked unlikely as vicious in-fighting engulfed the Tory Party leadership contest to replace the now interim PM Boris Johnson by mid September.

Initially, the Eso sector's best hope for Eso policy change seemed to rest with the candidature of ex health secretary Sajid Javid who, when he was business secretary, over-ruled his senior civil servant in order to offer an extra one percent of the equity in **Royal Mail (RM)** to all the employees. Sajid helped steer the once controversial privatisation of RM by permitting postal employees to obtain around 12 percent of its equity through free shares awards into their SIP. Although he withdrew from the leadership contest early on, he hoped that whoever became PM would invite him back into government in a senior role.

The resignation of the previous Chancellor Rishi Sunak and his replacement by ex education secretary Nadhim Zahawi dampened hopes, at least temporarily, that the government might modernise the Company Share Option Plan (CSOP), as requested by the Esop Centre and many share scheme practitioners. Although Mr Sunak rejected detailed Centre evidence calling for operational and structural changes in the discretionary Enterprise Management Incentive (EMI) share options based tax-advantaged scheme, he called for suggestions whether and how the other discretionary tax-advantaged scheme – the CSOP - might be re-booted to become a useful landing station for fast-growing SMEs who had out-grown their EMIs and fallen outside its tax relief rules.

Tory MPs decided in their ballot that Mr Sunak would fight it out with foreign secretary Liz Truss for Tory party members' votes in order to become the UK's next PM in mid- September. Although they both repeated the mantra about *going for growth,* neither – as this issue went to press – had even mentioned the key role of all-employee share ownership in raising productivity at work. This was explained by Centre steering committee member and Eso consultant David Craddock, in an article published in the summer issue of *Chartered One.* He wrote:

# Reform sidelined by PM election crisis

*"The unique contribution of employee share schemes is in facilitating business reward through matching wages with productivity and rewarding productivity once it has been achieved, **after** the evidence of the achievement, not before. Surely, that is consistent with best business practice, the equivalent of a trader invoicing once the job has been completed or invoicing on a step basis as the project work develops. In business terms, paying before the job has been done does not make any sense at all! The point is that: (1) once paid, wages create the demand in the economy while (2) the productivity creates the supply and the matching occurs. The principle has to be applied first at the micro-economic level of individual companies, then extrapolated at the macro-economic level to the economy and in that context, employee share schemes assume a role in the management of national economies. With the wage reward as the incentive, augmented by the employee share scheme rewards, truly "The Wages of Capital" as envisaged by Louis Kelso, the reward is extended for the employees to include dividends, profit share and capital gains. Furthermore, through that mechanism, the employees receive their true worth from the business. Kelso had always predicated his work on the premise that capital values rise faster than wages and, that capital values, in practice, require a fusion with the labour factor of production to truly flourish."*

Key elements in the all-employee share ownership reform campaign were highlighted in a Centre members-only *webclave* last month. Their topic was: *Are all-employee UK share schemes still fit for purpose?* The discussion was introduced by Stuart Bailey of **Computershare** and by Jennifer Rudman of **EQ** (*formerly Equiniti*). Although the *Chatham House Rule* prevents *newspad* from recounting in depth what was said, a straw poll revealed that 28 percent of members present want urgent radical changes to the structures of both SAYE-Sharesave and the Share Incentive Plan (SIP), while the rest -72 percent – favour some changes in order to make them more attractive to both employees and their employers. *Nobody thought that the rules and structure of the two all-employee tax-advantaged schemes should stay as they are.*

Main reform suggestions included:

**SIP**: Reduce the minimum tax relief vesting qualifying period from five years to three and possibly less.

**SAYE:** a) Introduce a *Look Back* clause when employee options are underwater, so that companies, when vesting approaches, can reduce the original option strike price to reflect current lower levels of share prices in most share markets. More than a few companies who operate SAYEs are saddled with their historic employee scheme share option strike price deeply underwater – i.e. the original option price award, even with a 20 percent discount, is higher than the actual market share price today – meaning that employees cannot exercise their options if vesting either has occurred recently, or is about to arrive. True, participants can get their SAYE scheme contractual savings back, but their real value will have shrunk at vesting due to sharply rising price inflation, as the bonus on savings is zero. A look-back clause (permitting options re-pricing) would lead to fewer scheme withdrawals by employee participants. The proposal is that in the run-up to vesting, the company sponsoring the SAYE scheme in which the options were under water would be permitted to reset the options price at a lower level. This problem is mitigated for SIP participants if they buy their partnership shares either monthly or quarterly because temporary falls in share prices can be smoothed over by regular share purchases.

b) Change the current bonus mechanism which still pays zero interest on employee SAYE savings, even though consumer price inflation is already at more than nine percent in annual terms. HMRC has this issue under review and has promised to report back shortly.

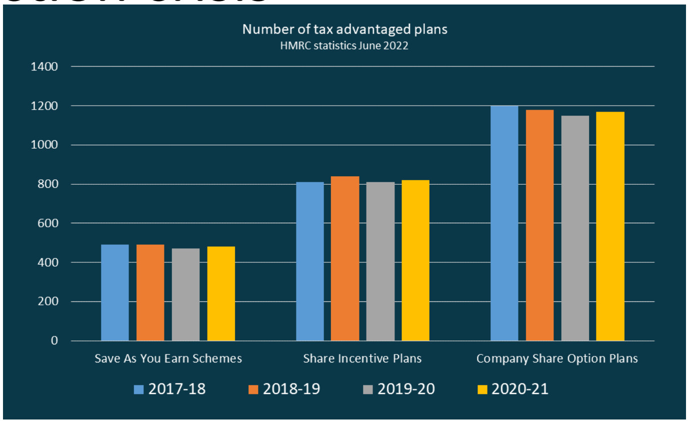
**REFORMS TO BOTH**:

a) Re-define the *Good Leaver* rules so that employees who resign after (say) two years are allowed to cash in at least some of their company shares/share options.

b) Introduce employee auto-enrolment in share schemes in quoted companies for all employees. Companies would pay the first £10 of employee share scheme contributions per participant per month, leaving it up to the employees thereafter to choose whether they wanted to build up equity stakes in their employer's business.

The future of **CSOP** featured too in the margins of the discussion, although it is a *discretionary* (i.e. selective) scheme and not an *all*-employee scheme. Members heard that CSOP was an under-used tool for broad-

# Reform sidelined by PM election crisis




based employee equity plans and should be adopted as such far more often. The Centre suggests that CSOP reform should include: *raising the 27-year old limit on individual options from £30,000 to £100,000 per individual; *simplifying the complex rules which govern scheme eligibility and *reducing the minimum holding period before vesting of CSOP options within the tax-advantaged regime from three years to two years.

UK high tech companies, who were start-ups two years ago, face an even worse employee relations problem than the companies stuck with underwater SAYE options. Most high tekkies compensate key staff mainly via share option awards which in some cases are deeply underwater, if not altogether drowned, with no near future hope of their owners being able to exercise their options. Some of these start-ups, following US practice, awarded share options to *all* their employees, under the tax-advantaged umbrella of either the SIP, or the CSOP. Some, like US gym equipment firm Peloton (*see full story further down)* have re-priced their options already to permit employees to realise value from their holdings - as an alternative to witnessing mass resignations among key staff. One way to do this without re-pricing is to allow underwater options to wither on the vine and issue new ones as replacements at a lower strike price.

Mr Sunak's caution over EMI reform was reinforced by the latest HMRC/ONS statistics, which showed a seven percent increase during the 20-21 fiscal year in the number of live EMI schemes, from 13,950 in the previous year to within a whisker of 15,000 during the year ended early last April. A record 10,000 executives and other key employees exercised their EMI options for a record collective gain of £830m, said HMRC. Income Tax and NICs relief on exercised EMI options cost taxpayers £400m gross, though a slice of this was clawed back by HMRC via Capital Gains Tax. What this demonstrated was that SMEs are queuing up to get on board the EMI bandwagon, flawed though the scheme is. The question they increasingly ask is: *What happens if by next year we have grown too big to qualify for the EMI tax advantages any longer?*

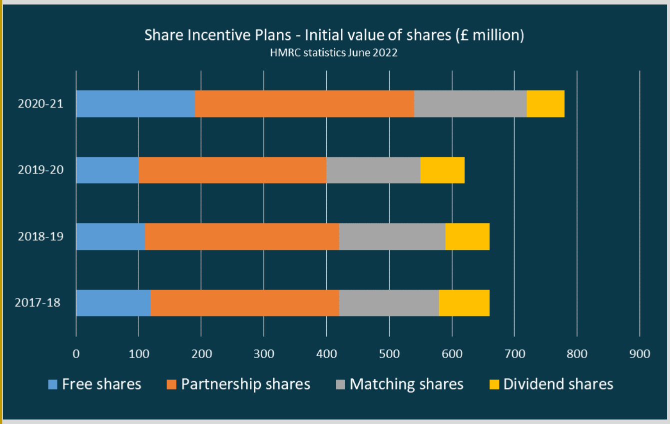
Yet again, as revealed in last month's issue of *newspad,* company usage of the other three tax-advantaged share schemes: - CSOP and the two all employee schemes - SAYE-Sharesave and the Share Incentive Plan (SIP) barely rose last year. The phenomenal popularity of EMI, albeit confined to SMEs, is acting as a fig-leaf for the rest of the share scheme sector, which is stagnant and in need of reform.

The other ex ministers who the Centre hoped would return to office once the Tory political fire-fight had died down, include John Glen, the ex-Treasury minister of state who displayed an interest in Eso. His resignation as City Minister was greeted with dismay, said the *FT.* Financial services executives praised Mr Glen for being on top of his brief steering post-Brexit regulatory reform. He was replaced by Richard Fuller**,** who was appointed economic secretary to the Treasury**.** Mr Fuller joined the management consultancy company, LEK Consulting and transferred to Sydney to help establish its Australian practice.

Lucy Frazer**,** the former solicitor general and ex prisons minister, remains financial secretary. Her responsibilities include the Office for National Statistics, and the Royal Mint. The Treasury did have departmental responsibility for HM Customs & Excise until its merger with the Inland Revenue to form HMRC, which is not controlled directly by any Treasury minister, though technically the chancellor holds overall responsibility for it. Ms Frazer does not seem to be an expert in employee share ownership. Neither Ms Truss, nor Rishi Sunak, a former hedge fund partner, has shown real commitment to promoting all-employee share ownership more widely. Like John Glen, Guy Opperman at DWP was a longserving minister supportive of employee shareholders, but he returned to the government to make use of the last weeks of the Johnson regime.

*Centre member **MM&K** has compiled a series of *Share Plan Fact Sheets* summarising the characteristics and taxation aspects of tax advantaged plans, which provide equity incentives to employees.

The **updated HMRC statistics** provide interesting information about employees' interactions with their contributory share plans as well as companies' use of SIP Free shares during the 2020-1 tax year which was set against the **background of the then continuing Covid-19 pandemic**. Perhaps the most interesting statistic of all is the increase in value of Free shares awarded, almost doubling from the previous year from £100m to £190m, with the number of employees receiving Free shares jumping from 100,000 to 330,000 - showing how nimble many companies were in awarding their employees morale-boosting Free shares in the midst of the pandemic.





# All-employee EMI

Global talent acquisition specialist **Petroplan Group** launched an Enterprise Management Incentive (EMI) scheme in the UK, with an equivalent share option scheme for its non-UK offices, giving its 80-strong workforce the chance to build an ownership stake. The move was unusual because a typical EMI in an SME company covers between six to eight senior executives and key employees. However, Petroplan is using EMI as an *all-employee* share options plan, designed to help drive productivity, performance and employee engagement, while strengthening the group's ability to attract and retain high-quality talent. Claire Salter, head of HR at Petroplan Group, said: *"Attracting and retaining our own talent is very important and was a critical element in the decision to introduce our employee share scheme. A key factor of Petroplan's scheme is that everyone gets a personal stake in the organisation from the day they join us. We are updating the scheme every four months, so that new employees can join the EMI without delay. There are some rules around eligibility, but these will not impact on existing employees."* Every new full-time employee at Petroplan is invited to join the share option scheme, with a minimum 12-month period before their options can be exercised. The number of options an employee is offered is based on their level of seniority, with each employee falling into one of three groups. The EMI scheme is helping employees see a direct link between their actions and the success of the business, said Salter. *"We have seen excitement around the financial benefits of the scheme, with people taking a real interest in how what they do plays a part in delivering our overall long-term business strategy and the increasing underlying value of our business,"* she added.

*HMRC extended the period of time for which an agreed valuation of shares to be used for Enterprise Management Incentive (EMI) options remains valid (*assuming no material changes occurred during the meantime*) from 90 days to 120 days during the pandemic. However on July 14 HMRC announced that the period was reverting to 90 days on December 1 this year. Therefore, any EMI valuation agreement letters issued on or after December 1 will be valid for 90 days only. When agreeing a valuation for EMI purposes, HMRC stated that it is agreed on the proviso that there are no changes prior to the granting of the options that could affect the accepted value. HMRC states that such changes include:

- Any change (completed or actively contemplated) in the share or loan capital of the company
- Any arm's length transactions (completed or actively contemplated) involving shares of the company
- Negotiations or preparations for a flotation or takeover
- Any declaration of a dividend on any class of shares in the company
- The publication by the company of any new financial information, for example, the annual accounts or interim results or announcement.

# Boom in SIP free share awards

Around 330,000 employees were offered free shares, worth collectively £190m, under SIP rules in the financial year ended April 2021, the annual HMRC share scheme statistics revealed. The number of employees who received free SIP shares in that year more than tripled – the highest for five years - in a pandemic affected business environment.

Some employers splashed out on SIP free share awards because they wanted to thank employees for helping to keep their businesses alive during the Covid aggro. Others did so because they wanted to retain staff longer-term, who might otherwise have migrated elsewhere.

The boom in the award of free SIP shares was one of the few bright spots in the otherwise gloomy canvas of share scheme statistics. However, the average value per employee of those free shares was only £570 – barely half the average value of such share awards in the previous fiscal year.

The number of employees who were granted SAYE options in the fiscal year 2020-21 went up by almost a quarter to 380,000, though the number of companies who issued them was only 260, the same as in the previous year.

Under the SIP, employees can be offered up to £3,600 of free shares each tax year and these must be given to all employees on the same terms. However, the allocation of free shares may differ depending on remuneration, length of service or hours worked; or may be linked to individual, team, divisional or corporate performance subject to safeguards to maintain the overall 'same terms' principle, said Centre member **Pinsent Masons.**

Despite former Chancellor Gordon Brown having inserted the free shares category into the scheme in order to boost the still poor productivity levels of the UK's workforce, few UK companies award groups of their employees free shares as a reward for their productivity. One reason for this is that many employers fear that free share awards to selected groups of high-performing employees, but not to others, would create anger and bitterness at the workplace among those not selected for free share awards.

Employees have to hang on to their free shares for five years in order to get full SIP tax relief. If they cash them in after three years, they have to pay Income Tax and NICs on their gains.

# Head-hunters choose equity incentives for employees

Centre member **RM2 Partnership** said many recruitment company clients have implemented an employee equity scheme to encourage long-term retention of key staff. This phenomenon is due partly to the fierce talent war, including staff poaching, in both the financial and consumer services sectors. *"Recruitment companies will often come to us to look for ways to structure equity incentives for their employees. These include executive, specialist IT & technical, property, tax and company secretarial, graduate and cross-sector recruitment,"* said the remuneration consultancy: *"They have characteristics which make an equity-based scheme particularly attractive. Their business model is extremely people-focused, and remuneration is traditionally commission heavy with potentially very lucrative returns for the best agents. Quick returns for excellent individual performance can be a positive driver in many ways but an over-reliance on this approach can sometimes result in a lack of focus on the long-term performance of the company as a whole and a tendency for individuals to work for themselves rather than as part of a team."* There were ten reasons why they chose a share scheme, said RM2: *Cash free motivation tool – granting share options or awarding shares kept ready cash in the company; *Long-term rewards improved retention of keen employees; *Could help reduce poaching by competitors; *Broadened the focus on all divisions and teams within the company/group; *Broader focus may help promote cross-referrals among teams; *Facilitates succession for owners seeking to exit in 3-5 years; *If key employees share in company-wide profits and capital growth, they have less incentive to set themselves up as a competitor; *Allowed longer-term focus on corporate growth instead of short-term, unsustainable results *Tax efficiencies for employees and the company; *Allowed non-executive directors to be paid partly in shares instead of cash.

# Still rising prices threaten employers

Prices are continuing to rise at their fastest rate for 40 years, with UK inflation, as measured by the Consumer Price Index (CPI) hitting 9.4 **percent** in the year to June, said the Office for National Statistics. That number is up from 9.1 percent annual inflation in May and at the highest level since February 1982. Rising inflation is putting additional pressure on companies, because some cannot pass on their own internal price rises to customers, for fear of losing orders. Ditto employee demand for substantial pay rises, which is why many are trying to placate employees by offering them a mix of cash and equity compensation, in the form of share options or deferred share awards.

However, prices were rising at an even faster rate already, according to the Retail Prices Index, (RPI), which ministers and Whitehall are keen to hide. For the RPI annual inflation rate rose to 11.8 percent in June, up slightly from 11.7 percent in May. **RPI includes mortgage interest payments**, which means it is heavily influenced by house prices and interest rates, while **CPI take no account of housing costs,** but factors in all the other goods and services. Final salary pension payments, income from index-linked annuities, income from some index-linked bonds, train tickets, mobile phone tariffs, air passenger duty, car tax, tobacco duty, alcohol duty and interest on student loans are all linked to annual movements in RPI:

*Around 30m people saw their take home pay rise when changes to National Insurance Contributions (NICs) came into force on July 6. The income threshold for paying the tax rose from £9,880 to £12,570, meaning a lower proportion of people's salaries were subject to it and two million people are now exempt from paying it altogether. For many, the change reversed the impact of the 1.25 per cent NIC rise introduced in April, which was a *one-year* levy to fund social care in the UK. Anyone earning less than around £35,000 saw their pay packet return to roughly the same level it was before April. Higher earners however, still pay more in NI contributions than they did in March.

*The government announced that more than a million NHS employees in England would get a pay rise of at least £1,400, with lowest earners getting an increase of up to 9.3 percent, but the Royal College of Nursing immediately balloted its members on possible strike action. Backdated to April 2022, porters and cleaners will obtain a 9.3 percent increase, eligible dentists and doctors will receive a 4.5 percent rise and junior doctors, who agreed a four-year deal in 2019, will get just over two percent. These were the highest uplifts in nearly 20 years and reflect the contributions public sector workers make, as well as the cost-of-living pressures they currently face. In addition, police officers in England and Wales were to receive a £1,900 salary uplift from September 1, while those on the lowest pay would see an up to 8.8 percent increase. All armed forces members will receive a base pay increase of 3.75 percent, with accommodation charges capped at one percent, and senior members of the military will get a 3.5 percent rise. Teachers have been granted pay rises of between five percent and 8.9 percent, effective from September, with starting pay for those outside London rising by 8.9 percent and salaries reaching £28,000 in the 2022/23 academic year. Experienced teachers will get a five percent award in 2022/23.

# Make Eso or profit-sharing in quoteds obligatory, urges HPC

Quoted companies should be obliged to introduce all-employee profit sharing or share ownership schemes, the left-leaning **High Pay Centre (HPC)** has proposed**,** but not everyone agrees. "It has long been an underlying theme at the **Esop Centre** that employee share scheme participation should be voluntary" said **Malcolm Hurlston CBE** founder of the Centre.

One of the reasons why some of the pay ratios between workers and ceos are so wide is that ceos receive large share-based payments in addition to their regular salary while employees do not, said an HPC report into pay gaps in quoted companies. "*This is the case even though employees contribute to good company performance and deserve to be rewarded for it. It is essential that these schemes cover all, not just part, of the workforce. In France, all companies are required to share an element of profits exceeding a set amount, calculated using factors including taxable profits, net equity, wages and added value with their workforce. A similar requirement could be replicated in the UK,"* it said.

In addition, shareholder votes on directors' remuneration reports should be legally binding, said the HPC. At present, whereas quoted companies are obliged to tear up their remuneration ***policies*** and reframe them if the triennial shareholder vote goes against them, they can more or less ignore annual agm shareholder votes against their remuneration ***reports.*** After suffering big shareholder rebellions over the executive pay report, such companies are *supposed* to hold sympathetic discussions with shareholder groups and are named and shamed in the Investment Association's *sin bin.* However, increasingly, these companies issue aggressive, self-justifying statements and brazenly sit it out, waiting for the fuss to subside.

The HPC report said: "*Whilst shareholders have a binding vote on a company's remuneration policy, their vote on the remuneration report - i.e. the executive pay packages - is only advisory. This can result in instances where a majority of shareholders oppose the remuneration report - including the pay ratio - but it remains unchanged. This was the case with Tesco in 2020, when two thirds of voting shareholders opposed the remuneration report. The ceo's remuneration was not altered, however, and as a result Tesco had the third highest ceo/ median pay ratio according to our analysis for last year's report, at 305:1. Similarly, at Morrisons' agm in 2021, 70 percent of shareholders voted against the remuneration report, but the ceo's remuneration remained unchanged, resulting in Morrisons having the fourth highest ceo/median pay ratio this year."* It is seldom indeed that sin-binned companies make major changes to their remuneration reports, even if they have been voted down by shareholders at the agm.

Companies should include guidance on potential future pay ratio sizes in their remuneration policies so that shareholders can vote on this, the report urged. The ceo: median employee pay ratio disclosure requirements should apply to all large employers, added the HPC. Its report on FTSE350 company pay ratios showed that while ceo pay rates fell at the start of the Covid-pandemic, they are now rising again. Pay gaps are rebounding post pandemic, with the 69 companies to have reported in the first quarter of 2022 showing a median pay ratio of 63:1, almost double the 34:1 median ratio at the same companies in 2021. Therefore, companies should include guidance on potential future pay ratio sizes in their remuneration policies so that shareholders can vote on this, the report added. More controversially, HPC urged amending company law to give the interests of all stakeholders equal importance, rather than elevating shareholder interests above those of others.

The widest and lowest ceo: median employee pay gaps identified by HPC were:

***Highest ceo: median paid employee ratio*** Ocado Retail 278; CRH Construction & Materials 267; Dunelm (FT250) Retail 204; Morrisons Retail 199; Flutter Travel & Leisure 198; AstraZeneca Health Care 197; B&M European Value Retail 196; Ashtead Industrial Goods & Services 185; JD Sports Retail 183; Diploma (FT250) Industrial Goods & Services 180

***Lowest ceo: median paid employee ratio:*** Beazley (FT250) Insurance 7; Trainline FT250 Travel & Leisure 8; Auto Trader Technology 11; Sanne Group (Centre member) FT250 Financial Services 11; Hiscox FT250 Insurance 12; Kainos FT250 Technology 12; Land Securities Real Estate 14; Moneysupermarket FT250 Technology 14; Reach FT 250 Media 14; Centrica Utilities 15

In part defence of the worst *sinners,* it should be pointed out that companies with low ceo: median paid employee ratios tend to be in the financial services sector, where even front-line employees tend to be highly qualified and much sought-after and hence paid much more than, say, supermarket check-out staff. This fact tends to lower the ceo: median employer pay ratio in the FS sector and high tech sectors considerably.

*Basic pay in real terms witnessed the biggest plunge in more than 20 years when rising prices are taken into account, said the Office for National Statistics. The value of wages (taking inflation into account) fell by an average of 3.7 percent over the three months to May, representing the worst annual drop since records began in 2001. "*Following recent increases in inflation, pay is now clearly falling in real terms both including and excluding bonuses*," said David Freeman, head of labour market and household statistics for the ONS. Basic pay, excluding bonuses, went up by 4.3 percent over the three months to May, before inflation was factored in. With bonuses included, total pay jumped 6.2 percent, largely driven by sums awarded in the financial sector.

# Audit and Corporate Governance reform

Large quoted companies will have to report on the specific steps they take to counter attempted fraud within their businesses, under proposals signalled in the government's delayed response to the paper issued by the Department for Business, Energy and Industrial Strategy (BEIS) in March 2021 titled "*Restoring Trust in Audit and Corporate Governance*". Ministers finally outlined reforms concerning public interest entities (PIEs), directors' accountability, new corporate reporting requirements, supervision of corporate reporting, enforcement against company directors and claw-back and malus in directors' remuneration, audit purpose and scope, audit committee oversight and engagement with shareholders, the audit market and supervision of audit quality. Attention focussed on the establishment and responsibilities of the new regulator, the **Audit, Reporting and Governance Authority (ARGA),** which will replace the Financial Reporting Council (FRC). Thereby, the government hopes to make it much harder for balance-sheet black holes to slip past auditors unnoticed. However, initial proposals to make directors personally oversee financial reporting controls have been dropped. This key issue will be tackled instead by the corporate governance code, which sets the standards, but companies can opt out as they see fit. Among the key overall proposals were:

- The government intends to legislate to require directors of PIEs (public interest entities) with 750+ employees and an annual turnover of £750m+ to report on actions they have taken to prevent and detect fraud, though auditor responsibilities will be unchanged.
- The FRC will be invited to include in the UK corporate governance code an explicit directors' statement about the effectiveness of the company's internal controls and the basis for that assessment. A consultation will be held on amending the code concerning malus and claw-back regarding executive director remuneration. ARGA will be responsible for issuing guidance on what should be treated as "realised" profits and losses.
- PIEs will be required to disclose their distributable reserves, and their directors will be required to make a statement in the annual report confirming the legality of proposed dividends and any dividends paid. PIEs will be required to publish a statutory resilience statement, a statutory audit and assurance policy, and report on actions to prevent and detect fraud.



A new managed shared audit requirement is to be introduced on a phased basis to require FTSE 350 companies (subject to some exemptions) to appoint a challenger firm as the sole group auditor or conduct a meaningful proportion of subsidiary audits. Powers will be made available for ARGA to introduce a *market share cap* if necessary for significant firm collapse or concerning managed shared audit. Legislation is to give ARGA powers to require operational separation of the largest audit firms and to monitor the health and address the resilience of audit firms. The new regulator will be given: *new statutory objectives and functions *a new statutory levy, responsibility for overseeing the accounting and actuarial professions *a stronger role in auditor registration and powers to set and monitor compliance with new requirements for audit committees concerning appointment and oversight of auditors *powers to review the entire contents of the annual report and accounts and to direct changes without the need of a court order *and covering all PIEs, powers to tackle breaches of company directors' duties relating to corporate reporting and audit.

# Audit and Corporate Governance reform

The government will task ARGA with issuing guidance on what should be treated as "realised" profits and losses for the purposes of determining distributable reserves. It intends to legislate to require PIEs with 750+ employees and an annual turnover of £750m to disclose their distributable reserves and explain the board's long-term approach to the amount and timing of shareholder returns.

The government intends to require directors of such companies to make an *explicit* statement confirming the legality of proposed dividends and any dividends paid in-year. The government will give careful consideration to the appropriate lead times for the new reporting. The White Paper said that company directors had various statutory duties under the Companies Act 2006, including oversight over the preparation of company accounts and reports, and the auditing of those accounts and reports. These duties, however, were rarely enforced, it said. In order to promote confident investment in UK markets and in individual PIEs, the government will give ARGA powers to investigate and, if necessary, sanction directors of PIEs for breaches of their corporate reporting and audit-related duties and responsibilities. There would be a requirement for a directors' statement on fraud measures and those relating to dividends and the disclosure of distributable reserves.

## Webinar

**Esop Sofa – newspad review**

**11:00am Thursday August 17**

In the next *newspad* review webinar, **Global Shares'** Darren Smith will chair a panel of share schemes experts, including Cathy Wears, of counsel in the **CMS** employee incentives team, and Tom Hicks, executive director of employee incentives at **Fiduchi**, for in-depth discussion of their pick of articles featured in recent editions of *"It's Our Business"*, *newspad* of the Esop Centre. The 45 minute webinar has been rescheduled to Wednesday August 17 at 11:00am. Further guest panellists to be announced. It is free to attend and registration is open.

Photo by JESHOOTS.COM on Unsplash

Any required legislation will be introduced when parliamentary time allows. While the government intends to create ARGA and equip it asap as per the draft legislation announced in the most recent Queen's Speech, the timescale for implementation of many of the reforms is expected to stretch over *several years* to give market participants time to plan and prepare. Some reforms will be taken forward without the need for primary legislation (for example, through changes to the UK corporate governance code (CGC), secondary legislation and the Listing Rules), and there is likely to be additional consultation by the regulators on such changes. The updated UK CGC will emphasise long-term sustainability, people, culture and employee engagement.

A strengthened audit firm governance code applies to the *big four* and to any other firms which audit FTSE350 companies, The new code, while still designed to promote audit quality, has changed the other two main objectives - to ensure firms take account of the public interest in their decision-making, particularly in audit and to safeguard the sustainability and resilience of audit practices and of firms as a whole. Firms are encouraged to adopt the code voluntarily although there is an expectation that the code will be applied once a firm audits 20 or more PIEs or more than one FTSE350 company. The code will operate on a 'comply or explain' basis.

A post-implementation review will occur five years after reform legislation comes into force. **A government paper** *Restoring Trust in Audit and Corporate Governance* was published in May 2022.

# MOVERS & SHAKERS

*Mahesh Varia, head of Incentives & Remuneration at Centre member ***Travers Smith***, has climbed Kilimanjaro, Africa's highest mountain! Mahesh recently reported that he had set off on a quest to tick off one of the things on his bucket list: trekking to the summit of Kilimanjaro - Uhuru Peak - which stands at a mere 5,895m (or 19,340 feet!) above sea level. He reached the summit on July 12.

*The **Financial Conduct Authority (FCA)** appointed Ashley Alder, the head of Hong Kong's securities watchdog, as its new chairman. Alder, who has run Hong Kong's Securities and Futures Commission since 2011, joins the UK's financial regulator next January at a time of internal strife amid strikes by staff over pay and conditions. He replaces interim chair, Richard Lloyd, who ran the consumer watchdog *Which?* for five years until 2016. Lloyd was appointed in June after Charles Randell stepped down as the FCA chair – a year before the official end of his five-year term. The appointment of Alder, who chairs the board of the International Organization of Securities Commissions, follows turbulent years for the FCA. The City watchdog was criticised for its handling of two major consumer scandals in 2019: the £236m collapse of London Capital & Finance, which sold unregulated mini-bonds to investors, and the failure of Neil Woodford's equity fund. The FCA found itself wrestling with its own staff after the appointment of Nikhil Rathi as ceo in 2020, replacing Andrew Bailey, who became the governor of the Bank of England. Rathi's restructuring of the FCA – including abolishing automatic bonuses, *widely considered to be part of basic pay*; introducing allegedly "unfair" changes to the staff appraisal system, and plans to cut staff pension rights and lower pay for non-London staff - triggered staff strikes over pay and conditions.

*London is the world's top destination for fin-tech investment, with $6.3bn (£5.3bn) raised in the first six months of this year alone, according to the latest statistics from the *Global Start-up Ecosystem Report*. London's tech ecosystem has a total value of $314bn, more than treble that of European rivals Berlin ($94 bn) and Paris ($89 bn). Top funding rounds in 2022 have included $312m for digital payments business *GoCardless* and $200m for software payments provider, *Paddle.*

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# COMPANIES

*The ceo of **AnglianWater,** which has one of the worst pollution records in England was awarded more than £1m in pay and bonuses. Peter Simpson landed a £337,651 bonus as part of a £1.3m pay package. This was despite English water firms overseeing such high levels of sewage pollution in rivers and coastal waters that the Environment Agency said that water company senior executives should be jailed for serious offences. Anglian Water recorded almost a quarter of all serious pollution incidents in 2021, according to the agency, reported *The Guardian*. Anglian had the third-highest rate of total pollution incidents per 10,000 square kilometres with 34, behind Southern Water with 94 and South West Water with 87. Anglian Water Services' annual report showed Simpson and cfo Steve Buck receiving maximum bonuses cut by 45 percent after missing customer delivery targets, which included goals on pollution and flooding. Simpson saw just five percent of his 2019 bonus clawed back too. His base salary rose to £531,365 in

2021-22, up from £505,277 a year earlier. Buck received a £919,253 pay package including a £228,243 bonus. Rival utility company Thames Water was criticised too for handing ceo Sarah Bentley £727,000 worth of bonuses, despite its own poor performance on pollution. The bulk of her bonus will be distributed as part of a £3.1m "*golden handshake*" sign-on payment. The agency gave Thames Water a two-star rating, like Anglian. Natalie Ceeney, chair of Anglian's remuneration committee said: *"Our environmental performance in 2021-22, including on pollution and flooding, haven't reached the levels our customers, stakeholders and regulators expect from us. We are very clear that poor performance should not be rewarded. As such, our underperformance in these key areas cancels out strong performance in other areas such as leakage. This means the performance measures element of the bonus scheme will not pay out at all this year*." Simpson's overall package, which was benchmarked against his peers', fell 37 percent from £2.1m the year before. However, pay campaigners said the curbs did not go far enough.

***Apple's** retail division paid just £796,000 in tax last year after making hefty payouts to employees through a stock option scheme. The amount of tax Apple paid was cut back by tax rates on share based compensation for Apple's employees, as Apple's share price performed strongly during the period, especially against the wider tech sell-off backdrop. Total turnover for Apple's Retail UK, Europe and UK team climbed a humble two per cent to £2.3bn in 2021, with total operating profit up 24 percent to £730m. It came as Apple Retail UK continued to suffer the impact of the pandemic, with turnover at £972m compared to £1.1bn for 2020, as a result of store closures during the year.

*About 150 Heathrow-based cabin crew employed by **CAE Crewing Services** on its contract for Scandinavian airline SAS Connect obtained an 18 percent pay rise, with wages set to increase by almost £5,000. The employees, who are members of trade union Unite, will receive a phased 18 percent pay rise, beginning with an immediate 11 percent hike, a four percent increase in November and a three percent rise in March 2023. This reverses a ten percent pay cut voluntarily accepted by the workforce during the pandemic. Unite secured the deal after negotiating to reverse the reduction, which was to ensure CAE Crewing Services' contract with SAS Connect was retained. In addition, long service payments have been introduced, which will be backdated and see staff receiving an extra seven percent for every two years served, up to eight years' service. Employees will receive a one-off £1,200 summer bonus this year, as well as increases in overnight rates and other pay elements. This year, senior cabin crew members with 48 months of service will see their wages immediately increase by £4,789.91. Cabin crew members who have served the same amount of time will see their salary go up by £4,019.35. However, SAS filed for bankruptcy protection after its pilots went on strike in the US.

*Senior executives at the big four accountant **EY'**s UK firm were being briefed on plans for the professional services giant to pursue a £66bn break-up. *Sky News* learnt that EY's 780 UK partners were invited to a central London hotel to hear its leadership team outline the next steps in a process which would emit shockwaves through the global audit profession. EY has been working on plans for months to carve out its consulting business from its audit firm in the belief that by removing conflicts of interest between the two sides, each would be more highly valued on a stand-alone basis. The audit firm would continue to be owned by its partners, while the consulting business - which provides advice to companies on areas such as financial restructuring, deal-making, tax and technology transformation - would seek a listing on a major international stock exchange. Although EY's global firm may announce its intention to pursue such a radical shake-up as soon as the next fortnight, partner votes are expected to take several months to organise, with approval also required by audit regulators around the world.

*The son-in-law of Mike Ashley moved closer to collecting a ***£100m*** shares bonus after a leap in profits at **Fraser**, the group which owns House of Fraser and Sports Direct. In the first set of results for ceo Michael Murray, adjusted profits in the year ended April 24 rose to £344m on sales which were up 31 percent to £4.7bn. He will get the share award if Fraser's shares hit £15 for 30 consecutive trading days in the next four years, said *The Telegraph.* They are currently trading at around 950p each, up by two-thirds in the year so far.

*There were crises of "*Hark at the kettle calling the saucepan black*" as **Guardian Media Group** editor in chief Katharine Viner received a 42 percent pay increase in the year to April, taking her salary up to £509,850. Former GMG ceo Annette Thomas received a total pay-off of almost £800,000, after she left following a fall-out with Ms Viner. She received a one-off *golden goodbye* payment on top of her £630,000 annual salary. The newspaper has been an arch critic of large executive bonus increases in recent years.

* The highest-paying London-based legal firms for junior lawyers are Centre member **Clifford Chance** and Freshfields Brukhaus Deringer, which offer starting salaries of £125,000. Clifford Chance increased its salary for newly qualified associates in May by 16 percent, which was the first pay rise at the firm since November 2021, when a 7.5 percent increase brought salaries up to £107,500.

***GSK**'s consumer spin-off **Haleon,** which owns brands from Sensodyne toothpaste to Panadol painkillers, began trading on the LSE in the biggest European listing in a decade. Haleon shares touched off at 330p, before steadying at c.315p, but shares in its ex-parent GSK rose slightly. Analysts were concerned about the amount of debt, likely to be £10bn, which Haleon was taking on as part of its de-merger. There were questions too about when GSK and Pfizer would start selling their remaining shareholdings in the business, of almost 14 and 32 percent respectively. Neither will be able to start selling these holdings until November. The de-merger marked GSK's biggest corporate re-structure in decades and will allow the pharmaceutical firm, which failed to develop its own Covid-19 vaccine during the pandemic, to focus on infectious diseases and vaccines. Haleon, which has 22,000 employees in 170 global markets, made £1.6bn in 2021, according to its prospectus. The company is headed by Brian McNamara, who joined GSK from the Swiss pharmaceutical firm Novartis in 2015. The new FTSE100 company will use the expertise of former Tesco ceo Sir Dave Lewis, appointed chairman designate last December.

***JD Sports** suffered a backlash over executive reward at its agm as investors speaking for more than a quarter of the shares voted against the remuneration report. A year after the chairman of the retailer's remuneration committee was kicked off the board over allegedly excessive executive bonuses, the report received backing from 72.3 percent of votes cast. The company claimed that the slight increase in votes backing the report from 68.5 percent to 72.3 percent year on year recognised that progress had been made over the reward issue.

***Klarna**, the "*Buy now, Pay later*" fintech, once Europe's most valuable private tech company, saw its value slashed by 85 percent to less than $7bn in its latest round of fundraising. The company, which enjoyed stellar growth while being criticised for potentially leading shoppers into unsustainable debt, announced its much reduced valuation after a difficult funding round, as investors continued to question the true worth of tech businesses. A year ago, Klarna, founded in Sweden in 2005, hit a peak valuation of $46bn after a $639m funding round led by Japan's SoftBank. Klarna, which has shed ten percent of its 7,000 staff, said that its popularity was continuing to surge and that with more than 150m customers globally, including 16m in the UK, it was bigger than American Express. Klarna blamed the difficult fundraising for coming amid "*possibly the worst set of circumstances to afflict stock markets since World War II*".

*Mutual life insurer **LV** (formerly **Liverpool Victoria**) was under pressure to disclose whether it would hand its outgoing ceo a pay-off after announcing that he would leave following the collapse of the plan last year to sell the mutual insurer to a US private equity firm. Seven months ago, its members did not give sufficient backing to the proposed £530m sale to Bain Capital. Mark Hartigan will stay on as interim ceo until a successor is found. Members would have received just £100 each for surrendering ownership to Bain Capital while with profits members were promised an additional payment when their policies matured.

***Made.com** cut its revenue and profit forecasts and warned of job cuts as costs rose and customers reduced spending on "big ticket" home improvement purchases because of the cost of living crisis. Shares in the online bespoke furniture retailer, which have lost almost 90 percent of their value since the company floated at 200p last June, plunged to 22p late last month. Just 18 months ago, when flushed with early success, Made.com awarded all its then 650 employees (*below senior management level*) equal share options – then worth £10,000 per frontline staff member - which would vest in three annual tranches, of which the fate of the second and third tranches look uncertain. Directors and HR were wrestling with the morale problems arising. Made.com issued its third profit warning in less than a year, saying that recent trading has been "volatile" and that it expected annual losses of £50m to £70m, up from a previous forecast of £15m to £30m made in May. Gross sales are expected to fall by 15 to 30 percent and so Made.com was seeking £15m in cost savings.

***Marks & Spencer** suffered a near 30 percent investor revolt against last year's reward package for its out-going ceo Steve Rowe, which gave him total bonuses of £1.6m, almost doubling his annual salary. More than 29 percent of voting shareholders at the M&S agm gave the thumbs down to the remuneration report. Yet M&S went immediately on the counter-attack, arguing that to have denied him the bonus would have been an act of *bad faith*. A large majority of shareholders had given their backing to Mr Rowe's farewell package, the board said in a statement which read: "*M&S has been proactively talking to our larger shareholders about this subject and we are aware of the reasons why some shareholders voted against the resolution on the remuneration report. However, the board is convinced that the majority of shareholders were right in their judgement on this issue. The Board strongly believes that it has acted in shareholders' interests and consistent with the values and integrity of the business in relation to Steve Rowe's remuneration. Steve served 37 years with the business, the last six years as ceo. Three weeks prior to the 2022 financial year-end we announced that he would be standing down at the results announcement, as part of a succession process that he helped to plan, handing the leadership to a team that he recruited. He worked full time and with total energy as ceo well beyond the end of the financial year.* All eligible colleagues have received a bonus this year, the first since 2017, in recognition of the strong financial performance. It would have been wholly wrong to exclude Steve, as the performance was delivered under his leadership. *To have denied him the bonus because he helped support an orderly and organised succession would have shown bad faith to a great servant of the business and would not have been in any way in shareholders' interests*. Following the agm, the remuneration committee intends to engage further with shareholders to *understand the concerns expressed by the minority*. An update on this engagement will be published in accordance with the UK Corporate Governance Code within six months of the agm. In the standard three-year cycle of approval, our remuneration **policy** (agm votes for which are binding) is due to be reviewed and presented to shareholders at the 2023 agm."

*Kwasi Kwarteng secretary of state for Business, Energy & Industrial Strategy (BEIS) announced that he had cleared the £6.3bn acquisition of defence contractor **Meggitt** by Ohio based Parker-Hannifin after the latter made undertakings to mitigate competition and national security concerns concerning its takeover of its Coventry -based peer. '*The business secretary has now accepted undertakings from the parties to mitigate national security risks and competition concerns,'* the Department said. The undertakings cover shoring up the security of supply, information security and sovereign UK capabilities. It will require the sale of Parker's aircraft wheels and brakes division to a purchaser approved by Kwarteng, on the grounds of competition concerns. Parker-Hannifin signed economic assurances that it would continue to use the Meggitt name as well as its own and retain the UK headquarters and advanced materials centre. It committed to increasing R&D activity and protecting jobs. '*We have agreed to substantial legally binding commitments, which underscore our deep commitment to the UK. As we move closer to the completion of the acquisition and the combination of these two strong businesses, we look forward to welcoming the Meggitt team to Parker*,' said Parker ceo & chair Tom Williams. The acquisition is still subject to regulatory clearance and approval at the High Court. It is expected to close in the third quarter of the year.

*Sandwich and coffee shop franchise **Pret a Manger** handed a share bonus worth almost £4m and a 27 percent salary rise to its ceo in the same year that it cut staff pay and took more than £50m in government support via furlough and business rates relief, reported *The Guardian.* The chain paid Pano Christou £4.2m in the year to the end of December 2021, including a £400,000 salary, revealed accounts for its main holding company. The ceo's basic salary figure alone was up 27 percent on the previous year at a time when Pret cut paid breaks for branch employees, meaning someone on an eight-hour shift, including a legally required half-hour break, would receive six percent less for each shift compared with pre-pandemic levels. The company has since raised pay for shop-floor staff twice amid heavy competition for workers as high street businesses have reopened. Pret is controlled by JAB Holding Company, a Luxembourg vehicle for Germany's billionaire Reimann family, which owns brands including Dr Pepper drinks and Douwe Egberts coffee. Accounts for Pret's main operating company show that its highest-paid director was awarded shares worth £3.8m in December last year as part of an LTIP package that is gradually paying out over 54 months to February next year. The shares cannot be sold unless Pret is bought out or listed on the stock market in future. The award was made in the same year that Pret said it accepted £15.2m in business rates relief and £35.4m in furlough payments for staff, on top of £64.3m in furlough and £15.7m in business rates relief a year before. Pret said the one-off share award had been re-established for senior management to "*reflect the progress the company has made against its transformation plan and growth prospects*". It said the final value of the share award would depend on Pret's future development. Its main holding company made a pre-tax *loss* of almost £255m last year, a third smaller than the £390m in 2020, as sales rose 17 percent to £461.5m.

*__Stanley Gibbons Group__ said it was seeking shareholder approval to de-list from London's AIM junior market, following discussions with its largest shareholder Phoenix SG, which holds a 58 percent stake in the Jersey-based rare stamp dealer and provides all its debt facilities. An egm is expected to take place on August 30, where shareholders will vote on the planned AIM cancellation, which is conditional upon the approval of at least 75 percent of votes cast. Stanley Gibbons said that the long term potential of the company remained unchanged, but it believed that there were benefits both from a financial and business perspective to delisting its shares. If the resolution were to fail to reach the voting hurdle, Phoenix may reconsider its continued financial support of the company, it warned.

*So secret is the equipment that **Ultra Electronics**' defence business supplies to Britain's fleet of nuclear submarines, that in takeover discussions this year, even advisers were not told exactly what it does. However, after 102 years as an independent company, this part of the UK's nuclear deterrent is now in US hands. Ministers waved through a £2.6bn takeover of the business by Boston-based private equity buyer **Advent International**. It was one of the final acts in a massive raid on British defence companies by US bidders that was triggered by the weak pound and an accommodating sales culture.

*Data creation platform business **Walr** introduced a phantom, or shadow options scheme, for its 70 employees. It will allow them to participate in the future success of the business by simulating stock ownership. Upon joining the firm, all staff will receive a number of options. If they decide to leave in the future, a bonus will be paid based on the value of the options at that time. Employees can choose to take future bonuses as cash, or as an equivalent value in shadow options based on the value of the firm at the time of new issue. This allows those who would prefer the bonus immediately to receive it, while others who want to be invested in the business can wait and be rewarded in the future. Walr said the launch of the plan demonstrated its dedication to two of its core values – *'Empowered to Act Like Owners'* and *'Celebrate as a Team.'* Ceo Patrick Fraser said: *"We wanted a scheme that aligned with our values and made all employees feel part of the team. If the company grows, the value of the employee options grow too. If we have success, we all benefit together. This is absolutely fundamental to Walr."*

# EMPLOYEE OWNERSHIP

*Retail and hospitality business **Great Cornish Food Store** became part employee-owned as it celebrated its sixth anniversary. GCFS, which is based in Truro and shares its premises with a major supermarket, said the move meant that its 24 staff would part-own the business and will enjoy a share of the profits. The employee-ownership model gives staff a more active role in how the organisation is run, with the aim of furthering its position as an attractive and rewarding place to work. Founder Ruth Huxley said: *"I was very aware how rewarding my dad found it being part of an employee-owned company and how much pride he had in his employers. I've had the idea for a while that this might be something I could replicate with my own business, and it feels like this is the perfect re-set moment for it."*

*NHS GP practice **Minehead Medical Centre** in Somerset became 98 percent owned by an employee ownership trust (EOT). Being an employee-owned entity allows its 50 staff to have a say in how the practice is run without needing to invest their own money. All profits made will be invested back into the practice to help improve services, training and wages. Ed Ford, the GP who led the development of the EOT at Minehead Medical Centre, said: *"We wanted to ensure that the business structure shouldn't rely on individuals holding shares that could be difficult to transfer if people wanted to leave, hence the idea of becoming an employee ownership trust. EOTs offers GP practices an alternative, more flexible operational model; offering staff a greater say in how practices are run and opportunities for the team to develop their careers by having a greater leadership role, without needing to have the funds to invest as a partner."*

Photo by Nikolai Chernichenko on Unsplash

*Surveying practice **Trident Building Consultancy**, which has offices in the UK and Dublin, has transferred ownership to its 90-plus employees, with all shares passing to an EOT. The management structure will stay in place, with the EOT managed by five trustees. They will act on behalf of all employees, who will benefit from a greater say in how the firm is operated and how available profits will be shared every year. Md Trevor Dowd, co-founding partner of Trident Building Consultancy, said: *"We have put in place a succession plan that will see new generations at Trident continuing to support our existing clients and developing new ones based on our reputation long after myself and others have retired. We think the EOT is the perfect solution and we are incredibly excited for the next chapter in the Trident story."*

# WORLD NEWSPAD

**Corporate Sustainability: EU draft Directive:** The European Commission adopted its long-awaited proposal for a *Corporate Sustainability Due Diligence Directive*. The draft directive aims to address human rights and environmental rights impacts in global value chains and foster responsible corporate behaviour. In-scope companies will be required to identify actual and potential adverse environmental and human rights impacts of their activities, and where necessary, prevent, mitigate or bring to an end such activities. The draft directive sets down a draft EU standard for human rights and environmental due diligence. Some member states have already introduced laws on human rights due diligence (including Germany and France), and many companies operate such initiatives on a voluntary basis. While higher standards can continue to apply in individual member states, it is intended that the draft directive will provide legal certainty and transparent rules for those doing business in the EU. It is directly applicable to larger companies only, with a lower size threshold applying for companies operating in specific "high-impact" sectors. It extends to certain non-EU companies that are active in the EU. In-scope companies are:

**Group 1 – Large Companies:** ***EU companies** with more than 500 employees, and a worldwide net turnover of over €150m in the last financial year for which annual financial statements have been prepared. ***Non-EU companies** that generated a net turnover of more than €150m in the EU in the financial year preceding the last financial year.

**Group 2 – High-Impact sectors: *EU companies** with more than 250 employees and a worldwide net turnover of over €40m in the last financial year, provided at least 50 percent of this net turnover is generated in one or more of a specified list of high-impact sectors. ***Non-EU companies** that generated a net turnover of between €40m and €150m in the financial year preceding the last one, provided that at least 50 percent of the company's net worldwide turnover was generated in one or more of the designated high-impact sectors. High-impact sectors listed in the draft directive are those where a high risk of human rights violations or harm to the environment has been identified. For companies in those sectors (Group 2), the rules will come into effect two years later than for Group 1. While SMEs are excluded from the scope of the directive, the Commission acknowledged the legislation may have indirect effects on SMEs as part of value chains. The DD includes measures to support SMEs – for example, an SME must be supported where complying with a code of conduct would jeopardise its viability. The Commission estimates that around ***17,000*** companies will be directly within the scope of the draft directive (including 4,000 non-EU companies). In-scope companies will be obliged to integrate due diligence into their corporate policies, which must be updated annually. They must adopt a due diligence policy, including a code of conduct to be followed by company employees and subsidiaries. Identify actual or potential adverse impacts

Adverse environmental and human rights impacts are defined by reference to violations of international conventions including forced labour, human trafficking, exports of endangered species, etc. In-scope companies will have to take appropriate measures to identify such actual and potential adverse environmental and human rights impacts arising from: (i) a company's own operations or operations of their subsidiaries, and (ii) where related to their value chains, from their established business relationships.

The obligation to identify impacts from established business relationships is quite broad. A company's "value chain" covers the life cycle of a product, including "activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of upstream and downstream established business relationships of the company". Companies in high-impact sectors (Group 2) must only identify actual and potential *severe* adverse impacts that are relevant to the high impact sector they are operating in. Regulated financial undertakings providing credit, loans etc are required to identify adverse impacts before providing those services. Having identified potential or actual adverse impacts, companies must then take appropriate measures to prevent, mitigate or remediate adverse impacts that have been identified by them (or should have been identified). "Appropriate measures" means a measure that is capable of achieving the objectives and being reasonably available to the company, taking into account the circumstances of the specific case – what is "appropriate" will depend on the facts at hand.

***Australian** digital bank **Volt** collapsed, leaving 140 employees without a job and 6,000 customers racing to withdraw their money. It announced it was closing its deposit taking business and would return its banking licence after it couldn't raise enough funds to stay afloat. *'Volt has made the difficult decision to close its deposit taking business and has commenced the process of returning all deposits to its account holders*,' the neo-bank's website said.

***Barclays** avoided almost £2bn in tax via an arrangement in **Luxembourg** that allowed it to pay less than one percent on profits for more than a decade, claimed a *Guardian* analysis of Barclays' tax bills. These showed it was still benefiting from a  decision in 2009, in which it booked profits from the $15.2bn sale of a fund management business in Luxembourg, rather than in the UK, where it is headquartered. By booking the profits overseas, Barclays could offset future profits against a drop in the value of company shares it acquired as part of the deal. The decision resulted in Barclays allegedly earning billions of pounds almost tax-free for more than 12 years and has raised questions about whether it influenced the bank's strategy in investing or growing the Luxembourg business at the expense of other locations, including the UK. Labour MP Margaret Hodge said: "These revelations that Barclays is using a scheme in a tax haven leaves the British-headquartered bank with important questions to answer. "*Does this artificial financial arrangement mean that profits are shifted away from the UK, thus harming our tax coffers? Or have business investments been channelled through this tax haven instead of in Britain, harming our economy in the process?"* Barclays employs only 54 staff in Luxembourg, but it is the bank's third most profitable jurisdiction after the US and UK, with turnover of £1.1bn last year. The bank has 46,000 staff in the UK and almost 10,000 in the US. Cumulatively, Barclays' Luxembourg operations have made £6.6bn in profits since 2013, according to tax documents released by the bank. Thanks to this tax arrangement, it has paid only £46m on those earnings, or about one percent. Barclays could have been taxed between 25 and 30 percent had it not taken advantage of rules allowing it to offset losses linked to $9bn-worth of shares acquired through the sale of its Barclays Global Investors (BGI) business to the US fund manager BlackRock in 2009. The bank may have saved £1.9bn in tax over the period, claimed *The Guardian*. Barclays said: "*We paid no Corporation Tax in Luxembourg in 2021 as our taxable profits were offset by substantial tax losses brought forward from prior years, and due to dividend income not being taxable under Luxembourg law.*" Its 2021 report stated. "*We have unused tax losses which are automatically carried forward, and available to offset against future taxable profits. The structure of the BGI sale was intended to secure a simpler and more certain tax treatment and avoid volatility in the bank's regulatory capital*." It stressed that Barclays had paid more than £14bn in UK taxes over the past decade.

**China:** Dutch internet company Prosus said it would reduce its 29 percent stake in **Tencent,** the Chinese conglomerate which owns WeChat, video games and other net-based services. Prosus, which is owned by South Africa based Naspers, said gradual sales of Tencent shares would help fund its share buy-back programme. However, Tencent's share price has more than halved since last February when the Chinese government launched a regulatory attack on video games companies. MA Huateng (*Pony Ma*), is Tencent's co-founder, chairman and ceo, who is not to be confused with Jack Ma (*no relation),* co-founder and former executive chairman of **Alibaba** Group, the multinational technology conglomerate currently planning a Hong Kong quote. In addition, Jack Ma co-founded Yunfeng Capital, a Chinese private equity firm. Ma is a strong proponent of an open and market-driven economy, but stepped down after ministers condemned a speech in which he accused them of alleged excessive bureaucracy and senior Chinese officials of outdated attitudes.

**Germany**: Companies with employees in Germany should have adjusted their employment contract templates by the beginning of this month, warned Centre legal member **Bird & Bird.** The German Bundestag recently passed far-reaching amendments to the Act on Proof of the Existence of an Employment Relationship (*Nachweisgesetz*), which was scheduled to come into force on August 1. According to these changes, employers *must i*nform their employees in writing about essential conditions of the employment relationship as specified by the law. Employers now face fines of up to €2,000 *per case* for violations. "*Employers must therefore act now! They must adapt their employment contract templates as quickly as possible by August 1. In addition, even in the case of employment relationships already existing before the deadline, they are obliged to provide promptly information on the essential contractual terms of the employment relationship upon request of the employee - and continue to do so in writing,"* said Bird & Bird. The amendments are based on Directive (EU) 2019/1152 on transparent and predictable working conditions in the EU (*Working Conditions Directive*) of the European Parliament and the European Council, which aims to improve working conditions through transparency and predictability of contractual terms. This obligation to provide proof applies to all employees, regardless of the duration of their employment. The employment contract must contain some new mandatory information. The following contractual conditions must be included, in addition to the contractual conditions already specified in Sec. 2 Act on Proof of the Existence of an Employment Relationship (NachwG):

- the possibility for employees to choose their workplace, if agreed
- the duration of the probationary period, if agreed;
- the remuneration of overtime
- separate indication of the components of remuneration and method of payment
- agreed breaks and rest periods in the case of agreed shift work: the shift system, shift schedule and prerequisites for shift changes
- details of work on call, if agreed
- the possibility of ordering overtime and its conditions, if agreed
- any entitlement to training provided by the employer
- in principle: name and address of the pension provider of the company pension scheme if provided, unless the pension provider itself is obliged to provide this information
- finally, the procedure to be followed when terminating the employment relationship. This includes (in addition to the notice period, which must already be specified) at least the written form requirement for termination and the period for filing an action for protection against dismissal in accordance with Sec. 4 German Employment Protection Act (KSchG).

*Multinational law firm and Centre member **Pinsent Masons** expanded into **Luxembourg,** launching a full-service law firm, having recruited a significant number of former Wildgen partners and their teams. Launched with an initial focus on the FS sector, the firm's seventh office in Continental Europe provides significant benefit to Pinsent Masons' clients, particularly corporate and investment fund clients in Ireland, Germany, Luxembourg, Spain, the Netherlands, France and the UK.

***Russia:** The government banned Russia from using British management consulting, accounting and PR services in a series of new sanctions. Foreign Secretary Liz Truss said the ban would cut off service exports critical to the Russian economy. Other sanctions among the 63 recently introduced target Russian media organisations and those working for them. *The government said UK accountancy, management consultancy and PR services account for ten percent of Russian imports in these sectors.*

*More than 15,000 millionaires are expected to flee Russia this year, as wealthy citizens turn their back on Vladmir Putin's regime after the invasion of Ukraine, according to an analysis of migration data. About 15 percent of Russians with more than $1m (£820,000) in ready assets are expected to have emigrated to other countries by the end of this year, according to migration data by Henley & Partners, which acts as match-maker between the super-rich and countries selling their citizenships. *"Russia [is] haemorrhaging millionaires,"* said Andrew Amoils, the head of research at New World Wealth, which compiled the data for Henley. *"Affluent individuals have been emigrating from Russia in steadily rising numbers every year over the past decade, an early warning sign of the problems the country is facing. Historically, major country collapses have usually been preceded by an acceleration in emigration of wealthy people, who are often the first to leave as they have the means to do so."* Ukraine is projected to suffer the greatest loss of high net worth individuals (HNWIs) as a proportion of its population, with 2,800 millionaires (or 42 percent of all HNWIs in Ukraine) expected to have left the country by the end of the year. The world's wealthy have traditionally relocated to the US and the UK but Henley said the United Arab Emirates was expected to overtake them as the No.1 destination for millionaire emigrants.

*****US**: **JPMorgan Chase** agreed to pay $200m in fines to the Securities and Exchange Commission and the Commodity Futures Trading Commission and admitted that its employees used WhatsApp and other platforms to communicate in ways that circumvented federal recordkeeping requirements. Citigroup, Goldman Sachs and HSBC Holdings have all indicated they're part of an industry-wide probe into whether their employees use unapproved methods of communication and aren't saving messages, reported Bloomberg. Deutsche Bank too is included in the sweeping probe by US regulators to find out how much employees rely on private communication channels such as WhatsApp to conduct business.

*Fitness equipment business **Peloton** offered its US employees either a one-off cash bonus or stock compensation changes in a bid to retain its workforce, according to internal memos. As of July 1, its hourly workers were eligible for a one-time cash bonus to be paid before the end of February next year, provided they stayed with the business through to January, with the bonus amount varying depending on their role. The offer was implemented after hourly paid employees said they would prefer to receive cash compensation, rather than longer-term equity grants. Eligible staff will have their post-initial public offering (IPO) options *re-priced* to Peloton's closing price on July 1 of $9.13 (£7.65). Options granted on March 1 had an exercise price of $27.62 (£23.14), but employees no longer saw any chance of cashing in after the stock price collapsed. After the re-pricing, they will be able to exercise their options after the price passed $9.13 (*now trading at c.$10.60*). At the height of the pandemic, Peloton was on top of the world. Its stock pushed $171 per share and its market cap hovered around $50bn. Now a much slimmed-down Peloton is a shadow of its former self.

It accelerated the vesting requirement by one year for eligible unvested restricted stock units that have more than eight vesting dates left in their schedule. This will let employees access the value of the stock units sooner, but the change does not apply to hourly employees or C-suite executives. A Peloton spokesperson said: *"We are committed to competitive and equitable compensation for our people. We shared our success in achieving a zero pay gap across our workforce, as well as actions we have taken to ensure our team members are incentivised to drive our continued progress as the world's leading connected fitness platform."*

*Shareholders at **Bank of America, Citigroup** and **Wells Fargo** refused to back climate proposals from activist investors requiring them to implement stricter fossil fuel financing policies, but the **New York State** pension fund urged bank shareholders to back climate resolutions.

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