Vol 39 No 4 January 2022

it's our business

newspad of the Employee Share Ownership Centre

EXCLUSIVE: Pay-out in sight for Roadchef Esop employees

The 24-year fight for compensation by hundreds of former employees of the motorway services operator **Roadchef** over the fate of their Esop shares looks set to end in victory later this year, (2022) *newspad* can reveal.

The surviving 400-500 Esop beneficiaries among the Roadchef employees have been told by their EBT trustee that 'constructive discussions' are underway with HMRC over a long-contested tax settlement of their court-ordered compensation.

Although nothing has been finalised, there is at last reason to hope that their compensation payments can be paid in two tranches, starting this autumn, Roadchef EBT1 trustee, Mr Christopher Winston Smith, told the beneficiaries.

After the expected settlement with HMRC, the trustee then must apply to the High Court for final approval of the outline deal, in order for all the payments to the beneficiaries to be authorised, he said.

As a clear sign that things are moving, the trustee has asked all the beneficiaries to provide proof of their identities before their share of the compensation pot can be paid.

Esop beneficiaries who used to work for Roadchef told *newspad* that they were 'over the moon' to be given the news that at least part of their compensation pots should be paid out later this year. "It's the most positive news we've had in a very long time," said another.

Mr Winston Smith told the beneficiaries by letter: "At long last, I can confirm that the trustee is in constructive discussions with HMRC regarding the long-standing disagreement over tax. I hope that this will result in a satisfactory outcome for both sides although nothing is certain until everything is signed and sealed."

He said that he expected the compensation to be paid in two tranches, the first in the latter half of this year, though he could not confirm what the average levels of compensation would be.

Acknowledging that a number of former Roadchef Esop participants had died without receiving even a penny of their court-awarded compensation, the trustee said that the legal representatives of the deceased beneficiaries would be sent the due amounts, to be distributed among the legatees.

The breakthrough may have come late last year when both sides agreed to the appointment of an independent mediator in order to settle the seemingly endless dispute.

Around 600 people then working for the Roadchef service station chain were due to benefit after the

From the chairman

Now exemplary Barbarians at the Gate, KKR bought a substantial company Bettcher Industries just before Christmas and lost no time in introducing KKR's employee ownership model. It sees employee engagement as a key driver in building stronger businesses. First employees share the equity return alongside KKR and in addition there is new emphasis on training and partnering the workforce in giving back to the community.

Centre member Pete Stavros is now in charge of KKR in the United States and KKR executive adviser Dan Daniel will take the chair at Bettcher.

In the UK meanwhile a great deal has been invested over the years in share schemes and the Centre has developed a range of practical proposals to make them work better. Nonetheless the number of employees nationwide is falling and a parallel drive is needed to find ways of reaching all participants into wider engagement along the lines of the KKR approach.

Malcolm Hurlston CBE

late md Patrick Gee, who led the 1983 buyout of the firm, decided to allocate them around 20 percent of the company's shares, using an early Esop, in the mid-80s. The scheme was put in place by his successor, Timothy Ingram Hill, who later was accused of disregarding Gee's wishes by later transferring the Esop shares into an executive shares incentive performance trust, which he controlled. When Roadchef was bought out in 1998 by Delek, an Israeli multinational, the sale made Mr Ingram Hill almost £27m, though he had owned a significant slice of the shares in his own right. He did make payments to the Esop participants for transferring their shares, but the amounts paid nowhere near reflected their much increased value.

For more than a decade, the Roadchef Esop participants could not go to court to seek compensation over their vanished Esop shares because their EBT had no money with which to fight for their rights. However, a change in the law allowed their lawyer to hire Harbour Litigation Funding to pay for the pursuit of Mr Ingram Hill in the High Court.

In late January 2014 Mrs Justice Proudman found that, irrespective of any wrongdoing on the part of Ingram Hill, the transfer of the Esop shares was void as it was outside the power of the trustees. The judge ruled that Roadchef EBT1 could therefore void the transfer of the shares. The High Court found Mr Ingram Hill liable for breach of fiduciary duty as he did not obtain the informed consent of other directors because he did not tell them he intended to secure the options over the shares in his own name.

Two battles with HMRC then began over whether or not the court-ordered compensation for the Esop participants should be taxed and, if so, on what basis. The trustee won the first battle by securing for the beneficiaries the repayment by HMRC of several millions of pounds which Mr Ingram Hill had paid as 'tax' on his profit from the shares sale to Delek. *As the sale of the Esop shares had been voided, legally no tax was due on the 'profit.'*

However, the second battle, over whether the compensation pots should be taxed, proved a harder nut to crack. HMRC repeatedly argued that the beneficiaries, despite being forced to wait so many years for payment of their compensation, were still liable to tax on the varying amounts they were due. The Roadchef Esop was established *before* the specific tax-protected regime of Esop schemes came fully into being.

About 4,000 former employees of the motorway catering firm could be eligible for compensation because of a bizarre out of court settlement. To his credit, Mr Ingram Hill said he would not pay the compensation unless the Esop participants received the lion's share of the cash. Finally, the agreed formula was that the ex-Esop participants are to get 61 percent of the compensation; contemporaneous former work colleagues who were not part of the Esop are to get nine percent and more recent Roadchef employees are to share the remaining 30 percent, *even though they had nothing whatever to do with the original Esop.*

All parties to the Roadchef case, including the judge, struggled with the crude definition of '*beneficiaries*' in the trust document as being those who *had worked at Roadchef at one time or another.* HR and legal experts point out that the Roadchef Esop was one of the first to be set up in the UK and that such loose wording would never be allowed in an Esop trust document today.

EVENTS

Speaker appeal for share plan symposium

Centre members have the first opportunity to submit speaker slot titles with bullet points for the fifth British Isles share plans symposium. Subject to Covid, it will take place in the London offices of senior member **Baker McKenzie** at New Bridge Street EC4 on **Wednesday** afternoon, **April 6 2022**. **Jeremy Edwards**, partner and head of Baker McKenzie's employee benefits group, is helping the Centre to prepare the event.

Members with a presentation in mind should contact the Centre to register interest. Speakers who deliver a share plan case study can invite client *plan issuers* to share their slot. Issuers attend free of charge.

Members who have registered will qualify to receive pre-recordings of at least ten topic presentations a week before the event. The presentations will be debated by a speaker panel and then thrown open to discussion.

Centre conferences are respected for their speaker expertise and networking opportunities. The 2021 symposium last March, our first to be hosted on-line, was a great success, drawing many compliments from participants.

Admission prices: Speakers from practitioner members: **£250** + vat**.** *Speakers from plan issuer companies will be admitted free of charge*.
Member delegates: **£395** + vat
Non-member delegates: **£595** + vat
The symposium will start at 13:30, concluding at 17:20 when participants will be invited to a reception, at which the *newspad Award* winners will be announced. To register as a speaker and to suggest a presentation topic, please email Fred Hackworth fred_hackworth@zyen.com (cc juliet_wigzell@zyen.com) or phone the team at Centre HQ on +44(0) 207 562 0586

Newspad 2021 Awards
Keep your entries coming in for the 2021 *newspad all-employee share plan awards*. These awards recognise the achievements of companies which offer all-employee share plans and who display best practice models for other companies to follow. Companies can nominate themselves or advisers can make submissions on behalf of clients. The deadline for all nominations is 5:00pm **Friday, January 14 2022.**
The award categories this year are:
Best international all-employee share plan:* *(In a company with more than 2,500 employees and participants in at least three countries).*
Best UK all-employee share plan in a mid-range company † this award highlights how share schemes usually benefit employees and businesses alike. († *In a company with between 500 and 2,501 employees and participants in no more than two countries)*
***Best all-employee share plan in an SME*‡** this award too highlights how share schemes can benefit employee and businesses alike in either listed or privately-held smaller companies. *(‡ In a company with fewer than 500 employees).*
Best executive/managerial equity reward plan: This award is designed to show why the issue of share options or deferred shares was the best solution in the circumstances. The submitted incentive plan must cover more than 100 executive and/or managerial employees.
Best share plan communications: This award highlights the need for communications programmes that are sensitive to the circumstances of an individual company and the make up of its workforce.
Best use of technology, AI or behavioural science: This award category recognises innovative uses of technology to manage, communicate and administer share schemes in a fast changing world.
Best HR director/head of reward/company secretary/employee share plan manager: This award is designed to recognise an outstanding senior officer who motivates staff to participate by taking a keen interest in the installation and monitoring of all-employee equity plans in the business.
Outstanding company leader: This award is designed to recognise a motivational chairman or ceo who effectively promotes all-employee equity with enthusiasm.
The winners will be decided by two judges, experts in the use of employee equities, plus Malcolm Hurlston CBE, founder of the Esop Centre. The *finalists* will be announced in *newspad* and award certificates will be presented during the Centre's British Isles share plans symposium**,** hosted by Centre member Baker McKenzie, on April 6 2022. Review the simplified **entry rules** at: www.esopcentre.com/ about/awards. Any questions - contact us at: esop@esopcentre.com Tel: +44 (0)20 7562 0586.

Webinar January 25 16:00
Share schemes expert David Craddock will follow up his September 14 talk on share schemes for non-employees & the gig economy with an FS Club webinar comparing the US gig economy with that of the UK. Broadcast will be at 4:00pm (GMT). Registrations now open.

Webinar report: The Employee Voice
A forgotten benefit of employee share ownership plans is the shareholder vote, said Damian Carnell, founder director of **CORPGRO,** a consultancy which helps companies with executive compensation, aiming for fair, sustainable growth, He told the online event that the Esop vote in the register was a very small percentage of the total vote, so employee shareholders did not have much say. *Could we not listen instead to the employee vote as a separate category at agms and feed the outcome back to the board to compare with votes over time and with institutional investor votes*, he asked? This could be a source of participation and information for the company. In time, good practice would expand to public disclosure, said Damian, who advises leading companies on executive compensation and performance pay supporting the business strategy. He was an adviser to the International Accounting

Standards Board on the share-based payment project IFRS2. He was joined by Jost Meye, HR director, group rewards at **Amadeus**, in opening out the topic to public debate. Jost works in the Madrid office of travel industry global software leader Amadeus, which has 16,500 employees worldwide, working with 474 airline clients and 132 airport operators. He manages Amadeus' equity programmes *(Share Purchase Plan, Restricted Stock Units and executive Performance Share Plan)*, is responsible for the overall annual salary and bonus processes and oversees its mobility programmes and corporate insurance policies.

A straw poll at the end of the webinar showed that the two speakers had convinced over a third of the audience that companies should implement the separate employee voice asap and should then see how it worked out in practice. However, half the online audience was more cautious, agreeing that the concept should be explored further before taking further action.

Employee share ownership can help companies rebound from the pandemic, said Damian, a chartered accountant who founded CORPGRO, having previously been a director with Willis Towers Watson and on the staff of founder members New Bridge Street Consultants There were genuine gains to be made from sharing the wealth created by the employees, but their votes were submerged by the large institutional shareholder block votes. However, if employee votes were counted separately, divergences might be seen in issues of concern to the employees. Feedback should be sent up to board level, so that directors could respond to viewpoints which might affect the health of the company, he said.

Jost explained that the Amadeus performance share plan was only available to 200 or so top management, but a recently overhauled three-year restricted shares plan was now available to 1,300 middle managers, with one third of the shares vesting each year and it was proving very popular. Finally, there was an equally popular share purchase plan, with a 40 percent take-up rate from 14,000 eligible employees, which operated in more than 30 countries. Companies like Amadeus had to prioritise their employee equity plans nowadays because the *War on Talent* was becoming more and more acute. Their share plans had to be top notch in order to attract the best talent. Amadeus knew that of its total shareholder vote at agms, only 0.2 percent were cast by employees, though collectively employees held a lot of its shares, he said. Almost all its board resolutions had been approved by 80-90 percent of voting shareholders at the most recent agm, though the advisory remuneration report vote was lost due to Covid factors, he added. Amadeus believed in two-way communications with its employees and the introduction of online voting was a sign of that. In the run-up to its agms, Amadeus now plans on sending internal emails to employees, stressing the importance of their voice and that their votes counted. In addition, many larger companies were using engagement surveys to connect with employees, to get their feedback on how the company operated and their roles within it, said Mr Meye.

Asked how to overcome board nervousness about separate employee shareholder votes, Mr Carnell admitted that there was 'some hesitation' in boardrooms about what the employees might be saying and voting, but refusing to permit separate votes would not stop employees from thinking ill of the company. Boards should face up to the facts and engage with employees and the best way to do that was to understand how employee shareholders felt about their employers.

The webinar was hosted by the Centre and chaired by Professor Michael Mainelli, executive chairman of the Z/Yen Group, which operates the Centre.

Report: Esops & trustees conference 2021

The Centre's employee share schemes and trustees conference, held in partnership with **STEP Jersey** on December 1, attracted 44 participants and was hosted on-line, with a welcome message from chairman, Professor Michael Mainelli, executive chairman of **the Z/Yen Group**. In her keynote address, **Jersey Finance**'s head of legal and technical, Lisa Springate explained how Eso schemes fit within the Jersey financial scene.

Lisa said that employee share schemes remained popular among the Jersey financial community. Current changes in recruitment had led to businesses fine tuning their employment related schemes with more employee share trusts being set up every year. Whatever the future for share schemes, their success would be underpinned by a strong team of independent advisers and in this respect Jersey shone.

*Graham Muir, partner, **CMS** and co-chair of the tax committee of the *Share Plan Lawyers Group* presented on - *hot topics in employee* *share ownership.* He highlighted engagement with HMRC. Graham was almost nostalgic about the very good relations which practitioners had enjoyed with HMRC until 2016. Now the mood music was very different – people at the Revenue's employee share schemes unit were much less experienced than their predecessors and often rejected direct access to staff when a tax problem arose. However the Shares & Assets Valuation section was an honourable exception, because staff there were open to discussion, he said. The use of 'Discretion' in tax-advantaged plans, especially the Enterprise Management Incentive (EMI) was a sore point with practitioners dealing with HMRC, said Graham. There were flash points over whether vesting was allowed within the rules if the directors said that it could; whether accelerating the vesting of options was allowed in certain circumstances, e.g. over a leaver or an exit and ditto over the waiving of performance conditions. People were writing to HMRC about such discretion, but were getting unexpectedly negative answers. Too often they were told that their EMIs would lose all their tax advantages if such and such happened. "*There has been a huge furore over this,*" Graham told the conference. HMRC had promised official written guidance on such issues, but practitioners were still waiting to see it. The Treasury Solicitor was allegedly looking it over, but it was needed without delay to bring back certainty into the market place, he added. Later, in discussion, delegates heard that advisers' client tax affairs were becoming ever more complex. Focusing on pensions, a trustee's experience with HMRC was much the same. It was a struggle to get any resolution.

Mr Muir said that the vast majority of expertise in the trustee sector resided in the Channel Islands, which was why CMS most frequently advised clients to use an offshore structure, though onshore structures were used too in the UK. The Capital Gains Tax benefit remained, but it was rarely a primary driver. JSOP (*joint share ownership plan)* trust arrangements for example were quite complicated, so it was useful to bring in the CI based experts to explain to clients how it would all work, he added.

*Share schemes barrister David Pett, of **Temple Tax Chambers**, tackled *recent changes in UK tax laws: court and tribunal decisions and the Finance Bill 2022.* He said that apart from the statutory changes relating to Covid, the biggest development was the progress of a case called "*Vermillion*" through the courts, which concerned the scope and application of Pt.7 of ITEPA; the tax rule which applies to employee shares and/or options. The case, which concerns the granting of a share option to a company investor, looked destined for the Supreme Court this year after HMRC appealed against the Scottish High Court ruling in favour of the investor. Hopefully, this would address the many uncertainties about the scope and application of those rules. Another case involved an employee awarded share options when he was a UK resident, but which vested when he was no longer UK resident. HMRC won that case – his gains *were* taxable, but the situation had changed after the new 2015 rules for internationally mobile employees. For the first time in his 40+ years experience as a tax lawyer there had been nothing in the Finance Bill 2022 on employment taxes! There was a disturbing trend on the part of the government in the direction of retrospective legislation, e.g. discovery assessments, which eroded trust in the rule of law. Mr Pett said he was disappointed that the chancellor had not responded to the consultation on the working of the EMI legislation, as no changes were yet forthcoming, nor any changes to the EOT legislation of 2014 either. Curiously, HMRC had shown little enthusiasm to date in checking whether the formation of some EOTs was in full compliance with the CGT rules. On EOTs, he said, "*Some people have been lucky to have got away with some flawed trust deeds and other documentation, which may yet come home to roost."* David's new book, entitled '*Employee Ownership Trusts'* will be out soon.

*Tax expert Paul Malin of **PMC** (*Paul Malin Consultancy*) chose for his topic: *The Common Reporting Standard (CRS) – What happens to the data within HMRC?* Paul raised the vision of an approaching dystopian world in which tax officers from different jurisdictions could be talking to each other about the results of cross-referencing data harvests from using Connect software on targeted individuals. Such software, as used by HMRC, was sometimes controlled by people with risk and intelligence service backgrounds, he said. The CRS allowed HMRC to make use of predictive analytics, such as – if data about a targeted individual revealed an offshore connection, then the first question was – *Is this being taxed?* Connect allowed HMRC to collect data from, (say) the DVLA and store it and then use it together with other data from innumerable sources to assess the level of that

person's (tax) risk. HMRC had had to implement one year long training programmes to bring staff up to speed on effective use of the Connect software, Paul explained.
*Elaine Graham, director, **Zedra Guernsey**, expanded on her topic - *The rise of Employee Ownership Trusts (EOTs).* She majored on the increasing demand for EOTs among SMEs, using an independent trustee to monitor such structures. They were a good solution to potential business succession problems and an alternative to selling to a third-party, she said. EOTs had been in the news recently with the Chartered Institute of Taxation (CIOT) encouraging a review of the tax regime surrounding it. Her presentation looked at why they were so popular, the benefits of EOTs; points that needed to be considered when setting up; and whether to onshore or offshore the trust, such as the importance of retaining professional trustees to guide the conversion transaction and act independently on behalf of the shareholding employees, including the directors. The bank of experience held in the Channel Islands by professional trustees was the key reason to go offshore, rather than onshore, for EOT conversions, said Elaine.
The EOT was a fantastic concept; a stepping stone that allowed the founder or owner to step away while keeping continuity and the culture of the company and allowing the next set of management to come through. However, the company had to be sincere in transferring ownership to its employees, rather than seeking a short-term tax advantage from adopting an EOT, she warned.
*Katherine Neal, head of employee incentives at **Ogier,** reviewed her presentation: *Round-up of the most common new structures in Jersey*. Katherine, a former trustee herself, summarised what she had been seeing, including: the continuing popularity of warehousing shares via employee benefit trusts and share plans for which shares were held for employee awards, an increase in the use of Channel Island trustees for EOTs and an increase in offshore trusts for JSOPs (*Joint Share Ownership Plans).* Sharing ownership with employees was something which governments worldwide were trying to encourage, she said. Today's entrepreneurs recognised that the best way to motivate employees and to keep them in post was to give them some ownership in the business. Companies had a weather eye on exit strategies, which included structures like JSOPs, which allowed trustees to act as nominees too, within EBTs.
Looking at the jurisdictions which were most active in the Channel Islands, the UK and the Middle East were still up there as sources of business, said Katherine. Both islands too now housed young entrepreneurs setting up tech companies who needed trustees. She was looking at phantom arrangements from Chinese clients, who were often impressed with BVI status within their portfolios. Latin America – Argentina, Peru, Bolivia - were taking in European talent to help run manufacturing industries and those executives wanted to share in the wealth created – hence the growing demand for share plans from that continent.
*David Craddock, founder and director of **David Craddock Consultancy Services** gave a presentation on: *Insights into share valuation for employee share schemes*, which was vital for unlisted companies. David addressed the interaction between Esops and share valuation, the latter based on a combination of statute and case law.
The market value of the shares (*perhaps based on an anonymous prudent potential buyer, in terms of what he/she might pay for them)* was a starting point for any negotiations with HMRC over the tax value of the shares vis-à-vis Capital Gains Tax.
Recognised bases for valuation were earnings, net assets, share trading, e.g. Growth Shares with or without discounted profit flow and the dividend basis.
His presentation provided seven case studies on valuation, including two on Growth Shares; plus, a foundational exposition on the relevant case law, with emphasis on one key case with important features. Share valuation was reliant on decisions of the courts. He included a user-friendly table of discounts.

The inter-active speaker discussion:

Katherine kicked off the panel debate by asking if her fellow panellists had views on offshore opposed to onshore providers, or the use of an offshore trust. Graham replied that from an 'external view': people continue to need expert trustee support for EOTs and that most of that expertise, for the UK, was located in the Channel Islands. Therefore, he regularly recommended his clients to use that route, adding that tax benefits are not generally the primary consideration of most people interested in setting up an EOT. Trustees had a deep understanding of JSOPs too, he said. Katherine mentioned that she had seen non-traditional incentive trust companies acting as trustees in EOTs simply because they have the relationships with family companies already in place. Mr Pett said the dichotomy that needed to be focussed on was not onshore/offshore, but between the choice of using what he termed as an in-house trustee- i.e. a specially formed company, members of which were the company that was to be sold or the officers or employees of that company -OR an independent trustee company. The reason was that, unlike in a conventional EBT, the trustees would have a controlling interest and a duty and obligation to involve themselves to a far higher standard in oversight of management and control in the business of the company. Not all trustees were set up to undertake that role (we had seen already where this had failed with a company and trustees have had to step in and exercise rights more akin to the way a PE investor would safeguard its investment, which can be unfamiliar territory to an independent trustee firm – not to say that they don't have the skill to do it; just they may not be set up to do it). On JSOPs: they were originally intended to be set up so that the co-owner would be a typical offshore EBT.

Mr Pett noted however that the EOT might not be the best vehicle for passing on to the successor management. Elaine responded to say she was not thinking of putting shares directly into the managers' hands, but transitioning the running of the company in the succession plan.

Mr Craddock remarked that a powerful configuration for many EOT clients was to have a combination of indirect and direct share ownership, with the indirect holding through the trust, augmented by a grant of EMI options (as long as it did not fall foul of the 51 percent holding requirement). Katherine noted that it was really the collaboration between offshore trustees and UK advisers and lawyers which was fundamental. when using offshore trusts to work on onshore products. Third party valuation was fundamental to the transaction. Mr Craddock confirmed that it is always a requirement, in advance of a transaction, to prepare a valuation for a minority interest position. The trustees could not purchase at an above market price as this would be a breach of trust (not just a tax matter). Therefore, it was fundamental that the trustee understood the valuation basis. In order that people could rely on it – a comprehensive valuation was essential. It was important to know that a valuation for an EOT could be very different to a valuation for an EST or EBT. There were two valuations at play: one for the whole company and one for the minority interest position, he said. The EOT was not for the purpose of trading, but for holding shares in perpetuity, whereas the EST can be used in trading the shares.

Elaine said: "In the Channel Islands we have seen keen interest in the use of independent trustees in EOTs and David Pett is right – it is not the usual EBT provider, holding a minority share; it is more like harnessing the experience within the Channel Islands, bringing together the capabilities and technical knowledge from the traditional employee share ownership side and combining it with a more private client type approach. To go back to David's point, the trustees are not there to run the business, that is the board's job, but it is with the documentation; that is where there is a lot of design; projecting what's likely to happen in various scenarios, etc., that needs to be accurately set up. Experience comes to the fore, but it has to be the right fit."

When the late Louis Kelso first developed the Esop, the concept was to recycle shares, generation after generation – the company did not necessarily have to sell to a third party, but could have that recycling and have the opportunity through the recycling for employees to take their bounty at the appropriate time.

Esops & trustees conference 2022

Hold the day for the Centre's return to Jersey for the next share schemes and trustees conference, at the Pomme d'Or Hotel on Friday May 13. It will be run in partnership with STEP Jersey. Details to follow.

OCORIAN

MOVERS AND SHAKERS

Howells Associates rejoins Centre
The Centre is delighted that Howells has taken up membership again for 2022 and beyond. This year is set to be an auspicious one for Howells, marking 30 years of share plan administration and the appointment of its new ceo, Alex Walsh. For three decades, Howells has provided market leading share plans software and services; ranging from comprehensive in-house systems to expert outsourcing, where its experienced team become a seamless extension of the plan provider. Renowned for forensic attention to detail, personable service, and expertise in the broadest range of plan structures – Howells' experience and longevity in the share plans space is second to none. Mr Walsh said "*I am extremely proud to be trusted with the legacy of Howells and re-joining the Esop Centre is a fitting way to kick off our 30th year in the sector. We have been quietly working in the background on a swathe of innovative changes to both our products and brand, to mark a step-change in the service warranted and expected from the 21st century end-user…I am very much looking forward to getting stuck into the outstanding share plans community!*" Howells offers complete systems and plan outsourcing for discretionary share plans, and insider list management software. For product information, job opportunities, or a friendly coffee, email alex.walsh@howells-associates.com.

On the Move
The **Employee Ownership Association** announced the appointment of a new chief executive to lead the EOA through its transition and growth plan. **James de le Vingne**, who has spent the past five years leading the Manchester based development unit at **Cooperatives UK**, will join the EOA next month. The search for a new ceo began last August when current ceo Deb Oxley OBE announced that she would be stepping down from her role at the EOA after six years at the helm. Mr de le Vingne said: "*I am thrilled to be joining the EOA at this time of great growth and opportunity. Employee ownership is a great fit for today's economy: collaborative, innovative and rooted in our communities. This winning formula, which provides employees with a stake and say in the workplace, has captured the imagination of business owners across the UK and I've been struck by their energy and enthusiasm of the model and the positive impact it delivers.*" De le Vingne, whose work at Cooperatives UK included establishing the *Ownership Hub* in partnership with the EOA, joins as the employee-owned sector sees its largest growth ever with more than 730 businesses. The appointment follows on from EOA's announcing a new chair Chris McDermott and president Patrick Lewis last year.
Obituary: Sir Peter Thompson, who led the employee buy-out of the **National Freight Corporation (NFC)**, has died aged 93. After plans to float parts of loss-making NFC collapsed in 1981, Sir Peter launched a successful MBO, in which 10,000 employees paid an average of £700 each to become owners of 80 percent of NFC's equity. Profits then grew by up to 40 percent per year, making many NFC lorry drivers into millionaires. Sir Peter stayed at or near the NFC helm for many years, before taking on directorships at local employee owned ventures, such as Child Base and various hospital trusts.

UK CORNER

Share plan pay-out bonanza for Pets at Home employees
More than 500 employees at **Pets at Home** are set to receive a share of a potential £11.7m payout from the firm's Sharesave scheme. Staff were able to purchase Pets at Home shares at a fixed price of just over 94p when the initiative launched in 2018; as at November 30, 2021, the share price had increased to £4.65. On average employees invested £148 per month, which totalled £5,345 over the scheme period. Someone contributing the maximum of £500 per month, saving a total of £18,000, could now own shares worth around ***£89,000***. Louise Stonier, chief people and culture officer at PaH, said: "*At Pets at Home, colleague share ownership is hugely important to our company culture. Our colleagues are so dedicated to supporting our customers and pets and I'm delighted that they are able to share in the value that we create together. It is wonderful to see them participating in share plans across the company and to hear what they plan to spend their well-earned money on.*"

Remuneration guidance in overdrive
Centre member **MM&K,** a leading executive remuneration adviser, criticised the Investment Association (IA) for overloading corporate

remuneration committees with too much guidance and regulation – so much so that top quality potential non-executive directors may be frightened off from applying for such key roles, it warned. MM&K spoke out after the IA wrote to the chairs of the remuneration committees in the FTSE 350 outlining its updated comprehensive principles of remuneration and highlighting IA members' focus areas for the 2022 AGM season. MM&K said in its latest client bulletin: "*Of course, companies must operate within a robust and proportionate governance structure. The updated IA principles, however, coming on top of the IA's April 2020 guidance on 'Shareholder Expectations on Executive Remuneration during the Covid-19 pandemic', increase the load on the majority of remuneration committees who reach that standard. Our research indicates that NEDs are concerned about the increasing burden of regulation and the potential implications for the quality (and diversity) of boards if talented individuals are deterred from wanting to become NEDs*"

PR battle over public sector bonus troughing

The Financial Conduct Authority (FCA) is hiring a City PR company on a £460,000 contract to help it push back employee demands to scrap planned pay and bonus cuts, reported *The Telegraph.* The FCA approached FTI Consulting after failing to attract any bidders for the job of helping the FCA to push the planned reforms through. Employees claim that the cuts would reduce most colleagues' pay packets by around ten percent. In addition, FCA ceo Nikhil Rathi wants to halt all staff bonus payments for the time being after a series of disastrous failures by the FCA to head off sudden bankruptcies by *Patisserie Valerie* and *Carillion*. He wants to end the current semi-automatic annual bonus culture at the FCA.

COMPANIES

*The $75bn takeover of Cambridge-based chip designer **Arm** by its California based rival **Nvidia** was unravelling after US regulators followed the UK and Europe in blocking "the largest semiconductor chip merger in history." The US Federal Trade Commission is suing to stop the takeover of Arm, which has ballooned in value from $40bn to $75bn since the offer was made last September due to a stock market surge in the chip sector. "*The FTC is suing to*

Join the Esop Centre

The Centre offers many benefits to members, whose support and professional activities are essential to the development of broad-based employee share ownership plans. Members include listed and private companies, as well professional experts providing share plan services covering accountancy, administration, design, finance, law and trusteeship.

Membership benefits in full:

⇒ Attend our conferences, half-day training seminars, breakfast roundtable discussions and high table dinners. Members receive heavily discounted entry to all paid events and preferential access to free events.

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block the largest semiconductor chip merger in history to prevent a chip conglomerate from stifling the innovation pipeline for next-generation technologies," said Holly Vedova, bureau of competition director at the FTC. "*This proposed deal would distort Arm's incentives in chip markets and allow the combined firm to unfairly undermine Nvidia's rivals*." Political opposition to the takeover is mounting after regulator action in both Europe and the UK. Almost half Arm's 6,500 employees work in the UK.

***Aston Martin** employees threatened the car manufacturer with strike action over changes to their company pension scheme. However, the directors have offered them shares in the company, as well as a cash payment, if they agree to switch from a defined benefit pension scheme to a defined contribution scheme from the end of this month. Trade union Unite said an initial ballot over potential industrial action had been held in response to the proposals. Staff taking part in the ballot want to hold a strike vote shortly over these plans. A consultation period between the car firm and affected staff closed last month. The union called for this to be extended. Unite general secretary Sharon Graham explained that the union will back members if they decide to take industrial action to defend their pensions. An Aston Martin spokesperson insisted the organisation recognised its duty as a responsible employer to deliver financially sustainable pension arrangements for its 2,000 employees, while managing risks and underlying costs, and has proposed changes that will affect around 400 of them. "*Should these changes occur, Aston Martin has outlined an attractive transition arrangement, including a one-off cash payment and equity in the company,"* said the spokesperson. "This is in addition to supporting the defined benefit pension scheme to meet the cost of pension benefits already earned."

*The takeover battle for **Blue Prism** seemed to be over as the Warrington based robotics software company agreed a raised £1.24bn offer from US fintech company, **SS&C Technologies.** Its £12.75-a-share cash offer beat a previous final offer of £12.50 from **Vista Equity**, the US private equity firm, prompting Blue Prism's board to withdraw support for that £1.22bn bid. Vista was then timed out for refusing to raise its bid yet again. Blue Prism's shareholders were ready to approve the deal, which would represent a major victory over

WHITE & CASE

private equity, saving hundreds of jobs, albeit their company falling into the hands of a US rival. Employee shareholders hope they can join SS&C's equity incentives schemes once the deal is approved. Blue Prism, which makes automation software, listed on AIM in 2015. It works with companies including EY, Jaguar Land Rover, Siemens, and Google. Last year, its software helped automate pandemic PPE ordering for the NHS. SS&C builds software for hedge funds, private equity firms, and healthcare companies. It pledged to maintain Blue Prism's UK HQ.

*The parent company of **Boots** is considering putting the UK's high street pharmacy chain on the market next year for up to £10bn. **Walgreen Boots Alliance (WBA),** the US health group which has owned a stake in Boots since 2012, is hiring Goldman Sachs to advise on a potential sale next year, according to *Sky News.* A potential market listing for the Nottingham-based retailer and pharmacist, which has more than 2,000 outlets and employs 55,000 people, may be considered as an alternative to a possible private sale. Boots, which was founded by Quaker John Boot in 1849, joined up with Alliance Unichem in 2006, handing control to Italian billionaire Stefano Pessina. The dealmaker then devised the even bigger merger with WBA, where he is chairman.

BT** became a potential takeover target - midst the current wave of highly leveraged takeovers of large quoted UK companies by foreign private equity consortiums. What sparked concern was the initial purchase by French-Israeli billionaire Patrick Drahi of 12.1 percent of BT's equity, via his telecoms co **Altice UK**, after seizing a £2bn stake in a market raid last June. Then, as soon as controls on further BT share purchases were lifted last month, Mr Drahi paid a further £1bn to increase his stake to ***18 percent, easily making him BT's largest shareholder, prompting an immediate government response that ministers would intervene if necessary. From this month, the government gains tougher powers to block the takeover of key national assets, as which BT would be designated, under the National Security and Investment Act 2021.

Takeover Panel rules state that once a shareholder controls 30 percent or more of the equity in a listed company, it must launch a full takeover bid, but BT hopes that the government would intervene if Mr Drahi raised his stake any higher than it is now.

"*We are pleased to take this opportunity to increase our shareholding in BT,"* said Drahi, who owns auction house *Sothebys*, which he took off the stock market by de-listing it. "*We have engaged constructively with the board and management of BT and look forward to continuing that dialogue. We continue to hold them in high regard and remain fully supportive of their strategy, principally to play the pivotal role in delivering the expansion of access to a full-fibre broadband network; an investment programme which is so important to both BT and to the UK"* he added. Mr Drahi could press for a spin-off of BT's infrastructure arm, Openreach, or a sale of its mobile arm **EE**. Some speculated that he could be even more ambitious, though he has refused all media comment on his intentions. BT has another six months in which to strengthen its defences as Mr Drahi cannot increase his stake further until June 15 under stock exchange rules unless a third-party prospective buyer emerges. BT has already hired investment bank Robey Warshaw, which recruited former chancellor George Osborne earlier this year, to help out. BT is planning 13,000 job cuts too. Adam Crozier, ex ITV ceo, is due to take over the chairman's seat at BT shortly.

*The owner company of the *Daily Mail* was being de-listed from the stock market after the controlling shareholder Lord Rothermere won over enough investors to back his bid to take the publisher private. An investment vehicle run by Jonathan Harmsworth, Viscount Rothermere, said that it had reached agreements to buy enough shares to control almost 57 percent of **Daily Mail & General Trust (DMGT)** – clearing the reduced 50 percent hurdle he required to win. Yet only a year ago, DMGT won a *newspad* Award for its innovatory Salary for Shares policy during the pandemic lockdown, which saved the jobs of dozens of Mail journalists by encouraging them to accept DMGT shares in return for pay cuts of up to 30 percent. Those journalists who signed up made a profit when their special shares vested, as the market value of DMGT shares had risen meantime. Their pay cuts were then reversed. Lord Rothermere made his first move last July, with a 251p per share offer, which – after minority shareholder group opposition - he later had to increase to 270p per share, valuing the newspaper business at £885m, including debt. Under stock exchange rules he had to make the same offer to all shareholders when trying to gain majority control.

*Mike Ashley's retail empire **Frasers Group** announced a £70m shares buy-back programme to reduce the number of its shares in circulation. Its share price has risen by more than 60 percent in the past year. Mr Ashley owns 68 percent of the equity in the group which includes *House of Fraser* and *Sports Direct.*

*Staff at **Future**, the owner of magazines from *Marie Claire* to *Metal Hammer*, are to share a £10m bonus pot after the publisher reported higher than expected revenue and profits for the year. Shares in the company, which owns digital assets including *TechRadar* and comparison site *GoCompare,* rose by more than 15 percent, reported *The Guardian.* Future reported a doubling of profit before tax to £107.8m, and a near 80 percent increase in revenues to £606m in the year to the end of September. Even after taking out fresh acquisitions made during the year, the company still reported year-on-year organic revenue growth of 23 percent – enough to beat its own forecast. Future, which has proved a pandemic success story thanks to a boom in reading and online shopping, said that it would be "*paying out the maximum to all our staff in the annual profit pool bonus scheme."* The minimum Future's 2,800 staff will receive is a £2,250 bonus each, with the amount graduated by factors including salary level, from a total pot of c. £10m. This year, staff earning under £50,000 will receive a four percent pay rise, while those on more will get two percent. A new bonus scheme for management, which has been implemented despite 40 percent of voting Future shareholders being against it, could award Byng-Thorne £40m when it starts paying out in

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tranches from next year. The scheme will benefit staff, who will share an annual pot of shares capped at *£95m* for three years, as long as Future's share price rises at least ten percent per year between 2020 and 2025, which it is currently doing.

*The planned takeover of **LV** by a US private equity firm collapsed after members of the customer-owned insurer rebelled against the board's plan for the £530m sale.

In a crushing blow to the LV board, which had been planning the deal for 15 months, only 69 percent of those members who voted on the **Bain Capital** deal backed the de-mutualisation, falling well short of the required 75 percent threshold. Although 1.2m LV policyholders were entitled to vote, only 15 percent did so. Ordinary members would have received only £100 each if Bain Capital had topped the 75 percent voting bar. A significant group of policyholders, backed by some politicians, had opposed the deal from the start, because they did not want to see the mutual fall into the hands of private equity. Alan Cook, the insurer's chairman, announced that he would stand down next year. The failure of the Bain deal opened the door for **Royal London**, LV's larger rival, to try to strike a deal that could preserve the insurer's mutual status.

*Mega bank **JP Morgan** awarded $25m worth of stock options to sole president Daniel Pinto, top henchman of Jamie Dimon.

*The profit share scheme at short-seller hedge fund **Marshall Wace** delivered £316m to 21 executives, equivalent to £15m each. City broker **Numis** paid its 319 staff average bonuses and salaries of £310,000 each last year as it raked in record revenues.

Investment bankers said that bonuses could be 50 percent bigger this year in several City finance houses as more companies floated, or raised capital.

***National Express** agreed an all-share deal to buy rival operator **Stagecoach**, creating a £1.9bn UK transport group and prompting an overhaul of the long-distance coach travel market. The deal will mean National Express shareholders control about 75 percent of the enlarged group. Stagecoach investors will receive 0.36 new National Express shares for each Stagecoach share, valuing the Scotland-based business at about £470m.

***Sensyne Health,** the healthcare technology company led by Lord Drayson, the former business and science minister, was fined and censured by the LSE for "serious failures" relating to the secret payment of £1m in executive bonuses, including to the peer, reported *The Times.* A probe by the Exchange found that Sensyne Health misled *Peel Hunt*, the company's nominated adviser, over cash bonuses of £850,000 to Drayson, founder, ceo and largest shareholder, and £200,000 to Lorimer Headley, its cfo at the time. The "post-IPO" bonuses were paid to the two directors in December 2018, four months after Sensyne floated on AIM, London's junior market, but were not referred to in the company's admission document for investors before the listing.

*The oil, gas and metals merchant **Trafigura** is rewarding its top traders and executives with financial rewards worth more than *$1bn* after making record profits from the market upheaval during the Covid pandemic. At $1.1bn, the rewards are 87 percent up on last year and follow volatility in the global commodities market helped the company to almost double its net profit to $3.1bn, the highest in its 28-year history. Trafigura used the severe swings in the market price for commodities that were driven by sudden lockdowns and re-openings to lock in profits through its trading activities. Commodity traders have emerged as one of the chief beneficiaries of the tumult in global markets, which has led to record highs in the price for oil, gas and copper. The huge windfall for Trafigura traders however falls short of the record payday for senior executives at the oil trading company **Vitol**, which handed the equivalent of more than $8m to each of its 350 most senior staff.

*The ceo of **Virgin Money UK**, who is overhauling Britain's sixth-largest bank, involving branch closures and job cuts, has seen his pay package more than double to £2.7m. The amount handed to David Duffy in the year to the end of September was his second highest since Virgin floated on the LSE in 2016. He received £1.35m last year. His reward has been boosted by the vesting of a share-based incentive scheme from 2018, according to the bank's annual report. Mr Duffy spearheaded a significant

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expansion of the lender, originally called the Clydesdale and Yorkshire Bank Group, after it was spun out of former parent **National Australia Bank**.

***WH Smith**'s ceo Carl Cowling is in line for a total reward package worth up to £4.4m this year, despite the stationery chain's £104m pre-tax loss in the year to last August. He almost doubled his Covid-hit remuneration to £1.1m last year after taking a pay cut in 2020 at the height of the pandemic when many airport and station newsagent shops were closed. However, he could hit the jackpot this year if he achieves maximum performance targets and if the share price rises by 50 percent. Mr Cowling's basic salary is due to rise to £600,000 pa in April. Investors have complained about what they term as '*over generous'* company contributions to the pensions of both the ceo (12.5 percent) and the fd, Robert Moorhead (15 percent). Almost one third of voting shareholders gave the thumbs down to the directors' remuneration report at last year's agm.

New Employee Ownership Trusts

Cambridge-based technology outfit **TTP Group** was sold to its staff in a *£276m* deal, among the largest transactions involving an employee ownership trust (EOT) yet seen. Centre member TTP, which transitioned to 100 percent staff ownership via the sale to a trust, said the move would ensure its long-term independence. TTP is a group of companies who work with large and small businesses to develop and exploit new technology and develop products. The team comprises more than *340* scientists, designers and engineers. It was involved in the rapid development of a ventilator for Covid-19 patients, which was ready for production within five weeks. Mark Gearing, Partner in Centre member **Fieldfisher**'s employee ownership team, said: "*Advising TTP Group on its move to an EOT was one of the most complex, but most interesting structuring arrangements the team has ever worked on. The sheer number of individual shareholders who accepted the offer from the EOT demonstrates the move to employee ownership is the right one for the business and its employees."* Dr Peter Taylor, chairman of TTP Group said: "*Employee ownership has always been at the heart of TTP's philosophy and culture. It gives us the freedom and incentive to explore, innovate, evolve and invest in the company as we see fit. This freedom is crucial in enabling us to do the right thing for our employees and our clients. It is one of the main reasons people want to work for TTP and it has contributed hugely in attracting some of the best talent there is into the business."*

*Creative agency **Clear Marketing** finalised its transition to employee ownership after founder Jim Smith stepped down. Smith said he and other directors knew that handing the business to another agency or investor would not be in the interest of its 20 employees, nor of its clients.

*Bradford, Yorkshire-based **Davison Fencing** became employee-owned by setting up an employee ownership trust (EOT). The EOT structure offers its 30 staff a vested interest in its future success, while md Chris Davison and the senior team are set to continue in their current roles.

*The **Folio Society** transferred its ownership into an EOT, giving its 40 employees 100 percent ownership.The current management board remain in their roles. In addition, an employee council and The Folio Society Trust are the other key elements in the structure.

*Stirling-based **Greentech Sportsturf**, which specialises in the design, construction and renovation of sports surfaces, transferred ownership of the business to its 14 employees via an EOT .The business has worked on ST.Andrews and Murrayfield..

*Sheffield-based **International Organisation Development** (**IOD Parc**) became employee owned after establishing an EOT. IOD Parc, which has a staff of 38, in the UK, Nepal, Australia and France, transferred ownership from two majority shareholders and a number of minority shareholders to all eligible employees.

Zaha Hadid Architects (ZHA)** converted to an employee ownership model by establishing an employee benefit trust (EBT), but **not** an EOT. The 42-year-old architecture business, which has 500 staff globally, will *not* award shares out of the EBT to any individual employee. It will have no external shareholders, so it can reinvest all profits back into the business and its staff, equipment and facilities. The practice, founded by double Stirling Prize winning Zaha Hadid, said the new model would allow it to prioritise its work with clients, communities and industry experts around the world. *An EBT model was chosen by the firm as it* ***enables shares gifted to the trust to be held in perpetuity on behalf of its existing and former employees as well as their families. The structure will enable the practice to embrace new ideas and technologies to deliver "*a repertoire of projects that become more spatially inventive, more structurally efficient, more technologically advanced and more sustainable,*" it said. A ZHA spokesperson said Hadid, who died in 2016, had empowered staff to nurture, develop and continue her work, with her unwavering optimism for the future and belief in the power of invention embedded in the practice.

Paper shares to dematerialise

The government published a policy paper announcing a package of proposed regulatory reforms, suggested by the Taskforce on Innovation, Growth and Regulatory Reform, reported the **EQ** client Bulletin. The paper collated the second phase of its response to recommendations on how the UK can reshape its approach to regulation following Brexit. Among the proposals was a plan to *dematerialise* those shares still held in paper, rather than electronic, form. Paper certificates are more expensive to deal with. It takes longer for holders of paper shares to trade them and there is a risk of certificates going astray, the paper said. Ministers will work with industry, regulators and shareholders in the medium term to determine the best mechanism for converting these paper shares into electronic form while preserving the rights of existing shareholders. It is not yet clear if this review would affect all companies or only quoted companies.

*Founders who list their companies on the LSE will from now on be allowed to keep control via a dual share structure. In addition, they still will be allowed to float their companies by offering just ten percent of their shares for sale, instead of 25 percent previously. However, companies worth less than £30m will no longer be allowed to list on the main market due to compliance concerns, but they can list on AIM instead.

*The number of companies listed on the London SE has shrunk to 1,964 – about 40 percent fewer than in 2007. However, the LSE could experience a flurry of blank cheque company flotations, it was predicted, after the City regulator relaxed the rules to give the UK the chance to benefit from the frenzy that has taken Wall Street by storm. The FCA said it was further relaxing proposed rules on special purpose acquisition companies, or Spacs, which raise cash from investors through flotations and only later find operating businesses to buy. It lowered the size threshold for Spacs qualifying for a key new concession - that they will not need to suspend their shares when announcing deals, reported *The Times.* The threshold has been cut from the £200m proposed in April to £100m.

EU gig economy crackdown will affect UK

Gig economy companies operating in the EU, such as **Uber** and **Deliveroo**, must ensure workers get the minimum wage, access to sick pay, holidays and other employment rights under plans for new laws to crack down on fake self-employment. Publishing long-awaited draft legislation, the **European Commission** said the burden of proof on employment status would shift to companies, rather than the individuals that work for them. Until now, gig economy workers have had to go to court to prove they are employees, or risk being denied basic rights.

Since Brexit, the UK government has no obligation to follow EU laws, while judges have been left to clarify employment law for a new generation of internet companies. In 2016 an employment court found that Uber drivers are not self-employed and should be paid the minimum wage, a verdict upheld by the Supreme Court last February. Companies in the gig economy have taken different approaches. *Just Eat Takeaway*, a large Dutch company, announced last year that gig workers would become employees with benefits.

Nicolas Schmit, EU commissioner for jobs and social rights, told the *Guardian* that internet platforms "have used grey zones in our legislation [and] all possible ambiguities" to develop their business models, resulting in a "misclassification" of millions of workers. Companies that did not allow people to work for other firms, or had rules about appearance and how to carry out tasks, could be classed as employers, under the proposals, under criteria used to determine employment status. The new rules would not apply to genuinely independent contractors. In the EU's 27 member states, about 5.5m workers are misclassified as self-employed, when they should be treated as employees with benefits and protection, such as accident insurance, said the Commission. Firms would only have to pay minimum wages, where they already exist. About 28m people work for platforms in the EU, but this is expected to reach *43m* by 2025.

Once the draft legislation comes into force EU-wide, gig economy companies may be asked to set up, or extend, share schemes for their newly designated delivery *employees*. Under the

Directive, workers would gain rights over algorithms, to stop situations where people are denied jobs, working hours or even fired as a result of machines' decisions. Instead, employees would have the right to receive explanations for and contest automated decisions, while companies would have to ensure access to a human contact for anything that would have a significant impact on the person.
*The High Court refused Uber's application to declare its gig-economy business model lawful following the Supreme Court's ruling on its worker rights and transport regulation. In February last year, the Supreme Court ruled against Uber and confirmed that its drivers were entitled to statutory protection under employment law. The ruling stated that it must pay its drivers the *National Living Wage* from when drivers log into the app until the end of their shift on days that they are willing and able to work, as well as offering them at least 28 paid holiday days. The App Drivers and Couriers Union (ADCU) said that the latest ruling meant private hire drivers would have access to their rights since they would no longer be treated as independent contractors running their own businesses.

ESG corner

*The *Gender Pay Gap Information Regulations* have attracted considerable scrutiny, with government committees and industry bodies calling for change, reported **Linklaters.** In the early days of reporting, reform seemed unnecessary: pay reports attracted considerable media interest and the risk of reputational damage, either for non-compliance or for publication of large gaps, acted as a sanction in itself. More recently, as conclusions from statistics become less easy to draw, given the impact of furlough, the conversation around pay gaps had petered out. It was time to ask whether pay gap reporting obligations in their current form were fit for purpose, said Linklaters.
The government had resisted early calls for change to gender pay gap reporting requirements but built into the regulations was an obligation to review their impact, including an assessment as to whether the regulations had achieved their objective. That review must be completed by April 1 this year, five years after the regulations came into force. Currently only employers with 250 or more employees were obliged to publish gender pay gap statistics. When the duty was introduced, it was thought that an obligation to report would be unduly burdensome for SMEs. Companies with 50 or fewer employees would be particularly sensitive to staff changes, with individual appointments, promotions or departures having the potential to cause a notable statistical impact. However, excluding companies with fewer than 250 employees, meant that the UK's gender pay gap was calculated using the data of only 50 percent of the UK's workforce. Widening the scope of the regulations would be a step towards greater transparency. Breaking down statistics into pay quartiles provided a more nuanced picture of an employer's pay gap. For employers with sizeable gaps, this tended to reveal a higher proportion of men in the top quartiles and a higher proportion of women in lower quartiles. A more detailed breakdown (for example into pay deciles) would provide a clearer picture of the point at which women's progress stalled. This, in turn, would allow employers to identify targeted actions to bring about change.
A new requirement to prepare an action plan would shift the focus from simply reporting the problem, to identifying constructive measures to address it. The Government Equalities Office guidance listed the benefits for employers of publishing an action plan. Making such plans mandatory would be a progressive step.
The prevalence of women performing part-time roles was regularly cited as a major contributor to the gender pay gap. Part-time work could be perceived as less valuable, attracting lower status and slower wage growth. A requirement to publish the gap between full time and part-time pay would shine a light on any inconsistencies in employer pay policies, which unfairly penalise women. The regulations did not provide sanctions against employers who fail to comply with their duty to report. This had long been a source of contention, said Linklaters. *The review could result in a new power to fine employers who failed to publish their statistics, or who published inaccurate statistics. An alternative approach might be to require employers to include gender pay gap statistics in their annual report which would require the data to be audited prior to publication.*
*The FCA and PRA set out joint proposals aimed at accelerating the development of diversity and inclusion in the FS sector. Their report shop-windowed regulatory drivers for

improved diversity, which include better decision-making and ensuring that the needs of wider consumer groups were being met. The areas discussed include: **the collection, reporting and monitoring of firms' diversity data; *widening the use of targets, at senior management level and in customer-facing roles, to address the under-representation of minority groups directly; *linking remuneration to progress on diversity for senior managers; *public disclosure of diversity data and related policies; and *consideration of diversity and inclusion as part of internal audits.* The paper emphasised the importance of senior management creating a culture of diversity and inclusion and identified the board as being responsible for setting the overall diversity strategy and overseeing progress. It made clear that 'diversity of thought' should be a "*key consideration*" in a firm's strategy when recruiting members of senior management, to minimise the risk of groupthink. Existing *Prescribed Responsibilities* relating to culture, typically held by the ceo and chairperson of dual-regulated firms, could be extended to diversity and inclusion, to make senior leaders directly and personally accountable. Furthermore, the report raised the issue of how adverse findings about diversity and inclusion issues could affect an assessment of an individual's fitness and propriety and whether such 'non-financial misconduct' could fall within the conduct rules.

WORLD NEWSPAD

Australia: Westpac, ANZ Bank and National Australia Bank will all face shareholder resolutions over their climate change plans at agms shortly, after the issue played a key part in Commonwealth Bank's agm last October. Citi analysts predict investors may start to push banks to include climate targets in the criteria for executive bonuses, as has already occurred in some resources companies and other heavy emitters.

A report from Citi's banking and environmental, social and governance (ESG) analysts said 12 ASX200 companies linked executive pay to climate change in 2020, citing figures from the *Australian Council of Superannuation Investors*. Energy companies were at the forefront of the movement globally. The report suggested investors may hold banks to a higher standard than the minimum requirement of regulators, saying climate goals could be included in "scorecards" which influence bonuses. "*More sustainable financing is likely to remain a key issue for investors, and we expect that given global trends to link remuneration and sustainability, it could be linked into scorecards given the need to introduce more hard measures,"* the analysts said. CBA revamped its pay regime, giving the board greater discretion over bonuses in order to encourage greater alignment between shareholders and executives' interests. Citi said NAB, ANZ and Westpac were in a "holding pattern" for executive pay, but there were likely to be bigger changes this year, when banks would incorporate new requirements from the regulator.

***Westpac** admitted it broke the law and agreed to pay £61m penalties (A$113m) after the Australian corporate regulator hit the bank with six lawsuits over shoddy treatment of customers, including charging 11,000 dead customers (or their relatives) continuing fees. The *Australian Securities and Investments Commission (*Asic) lashed the bank for a "poor compliance culture" that needed urgent improvement. In addition, the bank will be forced to pay £43m in direct compensation to its customers. The corporate watchdog said one of its six investigations into Westpac's behaviour found the bank had charged more than $7m in fees over a 10-year period to more than 11,000 "*deceased customers for financial advice services that were not provided due to their deaths*." Tens of thousands of customers were improperly charged tens of millions of dollars as a result of Westpac's misconduct, said Asic. It was the latest regulatory blow for the bank, which last year agreed to pay a record $1.3bn fine to settle legal action over allegations of non-compliance with money laundering and child exploitation regulations levelled against it by the financial intelligence agency, Austrac. In 2018 the bank was fined $3.3m for misconduct by trying to rig the benchmark bank bill swap rate. Asic's commissioner, Sarah Court, said it was "*unprecedented for Asic to file multiple proceedings against the same respondent at the same time*" and the regulator was "disappointed" that it continued to have to take big banks to court. "*The conduct and breaches alleged in these proceedings caused widespread consumer* *harm and ranged across Westpac's everyday banking, financial advice, superannuation and insurance businesses,"* she said.

Asic's litigation included allegations that Westpac charged 11,000 dead people more than $10m in fees, charged 7,000 people for two insurance policies over the same property, collected $12m in illegal commissions from 8,000 people, failed to properly disclose $7m in fees it charged to 25,000 customers, kept 21,000 accounts open for companies that no longer existed and on-sold debts to collectors at rates higher than it was allowed to charge. Westpac acknowledged that financial advice subsidiaries Magnitude Group and Securitor, both of which closed down in 2019, broke the Corporations Act by failing to provide financial services efficiently, honestly and fairly. Keeping 21,000 business accounts open even though the companies that held them had been deregistered allowed Westpac to keep charging fees. The bank admitted that the ways it broke the law included accepting payment without intending or being able to supply as ordered, as well as unconscionable conduct and continuing to charge a fee once an agreement had come to an end. Concerning the double charging of insurance premiums, Westpac admitted to breaches, including making false or misleading representations.

China: Struggling Chinese ride-hailing group **Didi** extended its employee shareholders' lock-up period indefinitely after moving to de-list its shares from the New York Stock Exchange, reported the *FT.* The decision prevents employees from selling any of their holdings *sine die.*

France: The **Orange** *Together 2021* employee share ownership plan was adopted by *64,000* subscribers in 37 countries, including the UK. Thanks to this broad participation, employee share ownership within the telecoms group reached more than seven percent of total Orange capital by the end of last year, the company announced. Stéphane Richard, chairman and ceo of the Orange Group, said: "*This result enables us to pass another milestone in our aim to ultimately achieve* ***ten percent*** *employee share ownership. By oversubscribing to Together 2021, our employees have demonstrated the trust they have in the group's development and our ability to make the Engage 2025 strategic plan a success."* The subscription price was set at €6.64 per share, corresponding to the average daily Orange share price over the 20 trading sessions from October 5 to November 1 2021, to which a 30 percent discount was then applied. This was Orange's 12th share ownership plan and the biggest yet. The company said that through such schemes, *employee shareholders play an active role in company governance, either directly or via the supervisory boards of employee shareholding funds.* Orange shares are listed on the Paris Euronext and on the NYSE.

However, Mr Richard is standing down after being convicted over a fraudulent €403m state payout to the late controversial tycoon, Barnard Tapie. Mr Richard, who was chief of staff to ex-French finance minister Christine Lagarde at the time of the offence, was fined €50,000 and given a one year suspended prison sentence after being found guilty of complicity in the misuse of public funds. Orange is 27 percent owned by the French State. Ms Lagarde, now president of the European Central Bank, was convicted of negligence in 2016 over the scandal, but was given no fine or sentence *due to her international reputation.* Mr Richard will leave his post by the end of this month.

Spain: Leading banker Andrea Orcel is set to receive €68m after **Santander** was ordered to pay compensation for rescinding an offer to make him ceo. A Spanish court ruled that Santander should pay compensation to Mr Orcel at the end of a case watched with interest by the City of London. Orcel, 58, said he hoped that the decision had ended the dispute, but the bank immediately said it would appeal. The Italian was a senior dealmaker at **UBS** in London for years, making him a well-known and influential figure in the Square Mile. He had established a close relationship with Ana Botín, executive chairwoman of Banco Santander. This bank was one of his key clients, but it discovered that buying him out of his employment contract and benefits with Swiss bank UBS would cost it far more than it had bargained for. Mr Orcel, who is now ceo of Italian bank **UniCredit,** claimed tens of millions in lost pay from Santander, Spain's biggest lender, which has a significant high street presence in Britain. The court ruled that Mr Orcel's contract was valid and that the bank had broken it by rescinding the job offer.

US: Vishal Garg, ceo of $7bn digital mortgage company **Better.com** used a single Zoom call to tell 900 of his employees that they were dismissed. Tech start-ups including fintechs are more prone to making sudden job cuts when business levels fall, but the number of cuts at Better.com and the way the announcement was made drew criticism. Mr Carg told them: "*If you're on this call, you're part of the unlucky group being laid off.*" About nine percent of the company's employees were laid off on the call. Better.com's cfo Kevin Ryan said: "*Having to conduct layoffs is gut-wrenching, especially this time of year. However, a fortress balance sheet and a reduced and focused workforce together set us up to play aggressively going into a radically evolving home-ownership market.*"

***McDonald's** clawed back more than $105m (£78m) in compensation from a former ceo accused of lying about inappropriate workplace relationships. British executive Steve Easterbrook agreed to return the cash and equity awards and issued an apology saying he failed to 'uphold McDonald´s values' as part of the settlement. McDonald's fired Easterbrook in 2019 after he was caught sending racy videos and text messages in a non-physical, consensual relationship with an employee, but later sued him to get back Esterbrook's benefits, saying he lied about consensual affairs with three other employees. Easterbrook's severance was valued at almost $42m when issued in 2019, but the company's stock has since risen by more than a third. From 2015 to 2019, he made $62m in compensation, suggesting that the massive claw-back reversed almost all he earned during his tenure as ceo.

***Mega bonuses on the way:** The top investment bankers in the US can expect to collect $5m-$10m (£3.7m-£7.5m) in bonuses this year, according to pay experts. The huge payday is due partly to the damage wreaked by the pandemic, as the crisis has forced a wave of takeovers and mergers, reported The Guardian. The banks that advise on these deals, which include US private equity group Clayton, Dubilier & Rice's £7bn takeover of Morrisons and the LSE's £20bn purchase of Reuters's owner, Refinitiv, collect a percentage of the total transaction for their services. They collect fees too for advising on flotations, private equity buyouts, and debt offerings. As well as the flurry of mergers and acquisitions (M&A), there was a 64 percent increase worldwide in the number of IPOs to 2,388 in 2021 over 2020, according to a study by EY.

The biggest paydays are expected in the US, where the deals completed last year totalled at least $2.3trn – a record high, according to Refinitiv data. Goldman Sachs, which had already raked in $11bn in fees by the end of September, was expected to increase its bonus pool by 50 percent, while rival Wall Street bank JP Morgan may raise its bonuses by 40 percent, according to sources. David Solomon, Goldman's ceo, told staff at the bank's results announcement in October that they could expect bumper bonuses. Mr Solomon, who swallowed a $10m pay cut in January over the 1MDB scandal in Malaysia, received a share-based bonus worth up to $30m to be paid in 2026. The bank said the awards *ensure leadership continuity and enhance retention in response to the rapidly increasing war for talent*. JP Morgan gave its ceo, Jamie Dimon, a special award of 1.5m share options last summer, which could be worth as much as $49m over ten years. This generosity was extended to Daniel Pinto, the bank's coo and president, who is the likely successor to Dimon. He was granted a retention planning share award worth up to $25m on top of his $24.5m reward in 2020.

While they may not collect bonuses as large as those of their New York colleagues, hundreds of London bankers will still receive millions when bonus season arrives later this month. London's luxury car dealers say they are preparing for possible fat-wallet splurges by increasing stock availability. Boutique bankers are expected to be the biggest beneficiaries in London as regulations introduced after the 2008 financial crisis prevent large banks from offering bonuses of more than 100 percent of fixed pay (or double that with shareholder approval). The smaller, mostly Mayfair-based, boutique advisers however are not covered by the rules, and have regularly paid out huge amounts.

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e-mail your latest news - new share schemes, vestings and appointments - to Fred Hackworth, editor, *newspad,* at: fred_hackworth@zyen.com

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