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it's our business

newspad of the Employee Share Ownership Centre

Top executive reward levelling off

A decade of ballooning executive reward packages in major UK companies may be coming to an end, according to the latest rewards trends survey published by Centre member **Willis Towers Watson (WTW).** For the median ceo salary annual increase among FTSE100 company ceos has been a mere two percent, treading water vis-à-vis retail price inflation, revealed their annual reports published since last September. Moreover, one in four top ceos received no salary increase at all, said WTW, whose senior director (reward) is **Damian Carnell.**

Tightening corporate governance requirements, increased shareholder activism and worldwide geo-political problems are weighing on the thinking of top company boards and remuneration committees. The other key survey results include:

*The median single figure ceo overall reward level (including bonus payments, pension contributions etc) slumped by ***ten percent*** from £4m in 2018 to £3.6m in 2019 to date, the survey revealed.

*The median annual bonus payout as a percentage of maximum fell from 75 percent last year to 70 percent so far this year. Discretion was applied by remuneration committees to reduce bonus payments in eight companies.

*Median LTIP (Long-Term Incentive Plan) vesting levels fell to 68 percent of maximum, from 71 percent of maximum last year.

*About 45 percent of these companies recently reduced their pension contributions to senior executives, following corporate governance pressures. More than 75 percent of those FTSE100 companies which applied reduced pension cash contributions last year did so only for new appointments, but this year 40 percent of companies reducing executive pension contributions are doing so for existing directors too.

Responding to rising shareholder and wider public concern, more leading companies have put a brake on pay-out opportunities in their executive equity incentive schemes, the WTW update showed.

From the chairman

Insurers don't interfere in investee companies, was my 'line to take' when I spoke for the British Insurance Association in the 1960s. Like most lines to take it was not the absolute truth and concealed much backstairs skulduggery but the fact that investors today take virtually the opposite line is down to one man, Peter Montagnon who died last week.

Peter came first to fame at the FT as part of a golden generation of business journalists, now much missed. He moved on to the Association of British Insurers which later subsumed its investment protection side into the Investment Association.

He worked closely with the Centre for more than a decade in the pursuit of better stewardship in the boardroom, especially in the realm of executive equity rewards. Peter continued to write columns on business ethics for the FT until last month, questioning whether boards were prioritising the right issues in their relentless search for high returns.

What sort of message does it send not only to shareholders, but to the wider world, when a listed company like GVC Holdings, a major power in the betting world, holds its agm, as we report in newspad, on a super yacht in Gibraltar?

He was equally keen on shareholders enjoying their voting rights rather than being muted through opaque structures. Peter turned the ship round. It is up to the rest of us the make sure it is full steam ahead.

Malcolm Hurlston CBE

"Changes to LTIP opportunity have been muted. More companies have reduced LTIP grant levels to take into account a share price decline and half have adjusted the vesting schedule," said the report. "*While there were some company specific*

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 e-mail: esop@esopcentre.com www.esopcentre.com

*circumstances that triggered negative recommendations, the **pay for performance link and large salary increases** continue to be key areas of focus,"* it said. "Companies that award above inflationary/broader employee base salary increases without clear communication and compelling rationale continue to receive push-back. We have seen an increase in scrutiny around incentive targets over recent years with concerns around the stretch of targets leading to negative recommendations this year. There are more examples of companies explicitly stating that they are making changes as a direct response to shareholder feedback.

"Although only a fifth of companies have tabled or are tabling a new remuneration *policy* for approval, changes are being implemented by a number of early adopters in response to the UK Corporate Governance Code and new disclosure regulations which apply from 2019. These changes include reductions to directors' pensions and the introduction of post-employment shareholding guidelines, observed alongside a continuing theme of restraint," said the Willis Towers Watson report.

Two of the six companies who increased their bonus opportunity reduced the LTIP opportunity in step, resulting in a re-balancing of incentives. One of the companies that increased bonus opportunity implemented a one-off growth incentive plan, it said. Eight of these companies have appointed a director on a pension less than that stated in the remuneration policy. Thirteen percent of companies have increased shareholding guidelines and 22 FTSE 100 companies now operate post-employment shareholding guidelines.

There was an increase in negative recommendations by shareholder proxy voting agencies **ISS** and **IVIS** on remuneration policies as well as reports to date. A larger proportion of companies have received an 'amber' top warning from IVIS on their remuneration report this year. However, median agm shareholder support remained stable at 96 percent for the remuneration *report*, while median support for remuneration *policies* this year is currently 93 percent. "*We have seen more companies receive votes of less than 90 percent for remuneration related resolutions at agms, with 35 percent of companies receiving a vote of less than 90 percent compared to 25 percent of companies last year,"* added Willis Towers Watson.

Despite all this, a few extraordinary executive reward deals got in under the wire. Contracting group **Kier's** top brass were awarded substantial pay rises just before they oversaw the outsourcer's descent into a crisis reminiscent of **Carillion** and **Interserve**. Aggregate pay for Kier's board members leapt by more than ***70 percent*** over three years to 2018 - from £3.3m to £5.6m. The figures cover both executive and non-executive directors, and include basic salary, bonus and pension payments, plus employee share scheme benefits and taxable benefits, as well as windfalls from the contractor's LTIP for its executive directors. Kier, which employs 18,000 people in the UK, will axe 1,200 jobs, sell off assets and suspend its dividend for two years in a bid to cut costs and regain control of its liabilities. It expects average monthly net debt for the year to June to be between £420m and £450m, more than double its current market value of £173m. Nevertheless, total Kier board pay increased by almost a quarter in the year to June 30, renewing questions over whether pay on boards of UK listed companies is sufficiently linked to performance. "*The pay increases highlight the absurdity of prevailing executive pay practices, with complex performance -related pay plans spitting out a number that is clearly inappropriate for a company on its knees*," said Luke Hildyard, a director of the left-leaning **High Pay Centre**. "*In a sane world, this would be recognised and stopped, but sadly many boards and shareholders in corporate Britain are out of touch with reality. One wonders what the Kier employees with the threat of redundancies hanging over their heads make of the situation."* Aggregate basic pay for the board of directors rose by more than half over the three years to 2018, reaching £2.7m in the year ended June 2018. Pension benefits rocketed by 60 percent over the past three years while performance-related bonuses jumped 59 percent. Taxable benefits increased by half. Meanwhile, Kier's share price slumped from £5 in February this year (after its last agm) to just £1.14 in recent days.

Willis Towers Watson*'s remuneration report was based on around two-thirds of FTSE 100 companies who have published their annual report and accounts to date (from September 2018 year-end onwards).*

*The government rejected calls by the parliamentary **Business, Energy and Industrial Strategy (BEIS) committee** to do more to force companies to link leading executives' pay to that of the rest of their workforce. **Kelly Tolhurst,** minister for **small business**, **consumers & corporate responsibility,** said her immediate priority was to focus on the effective implementation and assessment of recent corporate

governance reforms before considering any significant further changes. She said public companies now have to disclose and explain the ratio of their ceo's annual remuneration to the average pay of staff, while the Investment Association had set up a public register of significant shareholder revolts over pay – nicknamed the *Sin Bin*. (A link to the register can be found at http://esopcentre.co.uk/news/newspad/).

Last March, the BEIS committee of MPs criticised the government for its failure to curb 'extravagant' boardroom pay packages. Chair Rachel Reeves, MP (Lab), said: "*The government's response to our report on executive pay represents a missed opportunity to rein in bosses' pay and link ceo pay to that of the rest of their workforce. The success of a business is rarely solely down to the ceo and there should be greater efforts to ensure that workers have a share in the profits too*." MPs argue that a series of "shaming" decisions – including the attempt by the house-builder **Persimmon** to pay its former ceo Jeff Fairburn a bonus of *£110m* – had shown the need for stricter limits on executive reward.

The committee had called for greater use of profit-sharing schemes, more Eso, a reduction of variable pay bonuses over time, an absolute cap on ceo remuneration and giving employees a say in how their senior executives are paid. Reeves added: *"It's disappointing the government has rejected our recommendation that workers should sit on company pay committees. The appointment of a worker on remuneration committees would bring much-needed scepticism, challenge and perspective on executive rewards and help to curb some of the extravagant ceo pay packages we have seen in recent years."*

Ms Tolhurst said several companies were already inviting employee representatives to attend at least one remuneration committee meeting a year. The huge variety of companies meant one method would not suit all. Theresa May had vowed to put worker representatives on the boards of major companies when she campaigned to become PM in 2016, but the plan was ditched last year after lobbying from the CBI. The minister said that remuneration committees and shareholders – and not the government - should decide on an absolute cap on total pay, with shareholders having a say through the binding vote on executive pay policies every three years. It rejected MPs' recommendation to extend pay ratio reporting to *all* employers with more than 250 staff and to include the lowest pay band.

Workers on the board at Capita

Two **Capita** employees from its wider workforce are about to take up their seats on the company's board of directors, announced its ceo **Jon Lewis.**

"By including employees on the Capita board, we have taken an important step toward making sure the people who approve our strategy and whose duty it is to apply the highest standards of oversight bring to the table as broad a range as possible of perspectives and experiences," Mr Lewis told *The Telegraph.* "The job of any board is to do what is right for all stakeholders – for society, for clients and customers, for workers and for investors or owners. At times this can be a difficult balance to strike, but in my experience boards that are not effective are those that fail to strike it, or that succumb to the impulse of prioritising the needs of investors above all else. *Giving employees a voice on a board is a natural counterweight to this impulse and ensures Capita in future cannot lose touch with its most important asset, which is its people."*

"I am very much looking forward to welcoming **Lyndsay Browne** and **Joseph Murphy** – both of whom possess a deep understanding of Capita's processes, strengths and failings – to our next board meeting in July, and to working closely with them for years to come. *Of course, putting employees on boards is not revolutionary. Indeed, in many countries in Europe it is perfectly normal.* ***The UK is one of only ten EU member states where it is not mandatory.*** *In Norway, for example, any company with more than 50 workers is required by law to assign a third of board seats to employees. This is an issue upon which progress has been very slow.*

"*I predict as big business in Britain attempts to reconnect with an increasingly mistrustful public, we will see other companies follow Capita's lead, even in the absence of government legislation that compels them to do so.* ***That's because giving workers seats on the board is a powerful way to demonstrate corporate sincerity in terms of both concern for employee welfare and the desire to do what is right for everyone, not just for the people at the top."***

The Financial Reporting Council's new corporate governance code came into force in the UK earlier this year. The code, which applies only to FTSE-listed companies, stops short of stipulating employees are given seats on boards. Instead it gives firms alternative options, such as making an existing board member responsible for engaging with the workforce, or the creation of a formal workforce advisory panel.

"Resisting calls to put employees on boards in my

opinion is short-term thinking, and will ultimately prove futile. The arguments against doing it – that employees on boards will somehow slow organisational progress, or that they represent risk to corporate value – simply do not stack up. Some of the world's most successful and dynamic companies have employees on their boards. I believe it is the way of the future and I am proud that Capita is playing a leadership role in embracing employee inclusion at board level in the UK, ahead of the pack," added Mr Lewis. Almost 400 Capita employees applied to be board members.

Please send us your Eso stories: Both Centre members and other *newspad* readers are welcome to send us news about employee share ownership plans in companies both large and small. You can tell us about plans which have just vested, perhaps giving employee participants a decent return from their shares or share options. Share plan advisers can send us info about innovative features in recent plans which they have installed for clients. Or you can send us brief information about changes in share plan personnel at a senior level in your organisation. Please send your info to *newspad* editor, Fred Hackworth:

fhackworth@hurlstons.com. We equally like to hear from employee shareholders, their concerns and experiences. A volunteer panel is ready to help with questions. Write to aes@hurlstons.com

EVENTS

Centre high table fully booked

Demand was swift for places at the next Centre dinner-discussion on August 29 where chairman Malcolm Hurlston will host ex Cabinet minister and Esop fan, the **Rt Hon. Sir Michael Fallon MP**. Last year Sir Michael was asked by the government to identify new employee share ownership formats, a probe to which the Centre contributed. Thank you to members who have booked their places at the high table. Diners will enjoy a lively discussion in the intimate atmosphere of the Hurricane room at the RAF Club London.

Save the day for Guernsey

The next **Esop Institute/Society of Trust & Estate Practitioners (STEP) Guernsey** seminar is set for **Friday November 8 2019** at the Old Government House hotel, St Peter Port. Last year's event was an outstanding success, which we look to emulate this year, building on the achievements of this industry-leading networking and learning opportunity. Don't miss this key event for all those interested in employee share schemes and trusteeship. Details will be announced soon. To register your interest, write to: events@esopcentre.com

Speakers sought for Centre symposium 2020

Practitioner members are invited to apply for speaker roles at the Centre's fourth British Isles share plans symposium, which will be hosted by senior legal member **Linklaters** at its **Silk Street, London EC2**, headquarters on **Thursday**, **March 26** next year. The Centre's principal contact at Linklaters, **Alexandra Beidas**, partner in the Incentives division, told *newspad* that Linklaters was delighted to host the all-day event in its auditorium. Those Centre members who wish to participate actively in this key event – either by co -sponsoring our e-brochure and/or by delivering a topic presentation - should contact Fred Hackworth at: fhackworth@hurlstons.com or Juliet Wigzell by phone at Centre HQ: 020 7239 4971.

MOVERS AND SHAKERS

On the move

***Sian Halcrow-Wilson** is in post as head of european equity solutions at **Aon**.

*__Ian Cox is in his new post__ as md, head of share plan services, Equiniti Boardroom at Centre member **Equiniti**

***Sharon White**, head of **Ofcom**, is to be the new chairman of the "employee-owned" **John Lewis Partnership,** with a salary of £990,000 pa. She will succeed **Sir Charlie Mayfield.**

Paul Anderson** of *Mourant Governance Services* told newspad: "I'm in training for arguably one of the biggest challenges of my life and unashamedly I'm asking for your help. ***The Stroke Association Cycle Challenge will take us the 350 miles from London to Amsterdam in four days. I've never asked for any sponsorship before but I'm asking now. Anything you can donate would just be amazing and as I'm covering the cost of the trip, all the funds raised will be used to help rebuild people's lives. If you're able to support me and this wonderful charity please follow the link to my *JustGiving* page and donate what you can afford. I'm incredibly grateful"

*__Beverley Johnson__ is promoted to the post of lead business development manager at YBS Share Plans.

*About 32m **Americans** own employer stock through Esops, stock options, stock purchase plans and/or 401(k) retirement plans, estimates the California based **National Center for Employee Ownership.** There are almost 10,000 US companies which have Esop and Esop-like plans with 15.5m employee participants, it said.*

*The seventh annual **Employee Ownership Day** was on June 28, reported **RM2.** There are around 350 employee-owned businesses in the UK, with more than 60 percent of the growth in that sector in the years since 2014, when the **Employee Ownership Trust** was introduced, it said.

*__Gannons__ has been shortlisted for Best Legal Team at the UKBAA Angel Investment Awards 2019. The award recognises the legal firm that is making a significant impact on the ecosystem, both through actively supporting angel and early stage investment deals and bringing added value to the investment process.

Intertrust acquires Viteos

Centre member Intertrust has bought **Viteos**, a top ten US fund administration provider, delivering tech-enabled, value added services to the funds industry. With more than 700 highly skilled employees, Viteos has grown into an industry leader servicing $350bn in assets. As well as widening Intertrust's range of services with its comprehensive fund solutions, Viteos' leading edge technology across artificial intelligence, block-chain and robotics process automation will enable it to significantly improve its service offering.

Worked Examples Group

A worked example developed by William Franklin, of Centre member **Pett Franklin**, has been approved by both the HMRC and the share valuations **Worked Examples Group (WEG)**. The Esop Centre hosts WEG, whose members include representatives from leading share scheme bodies who meet HMRC officials. Agreed examples are published first as *Understandings* on the Centre website and later by HMRC, with the aim of making the work of share scheme valuation simpler. The new worked example '*Pamela*' covers the valuation of a minority interest in a company which is majority owned by an Employee Ownership Trust (EOT). The number of EOT transactions is increasing and the trust, if it is to comply with EOT rules, must always have a majority stake. A trust which is not an EOT can still facilitate employee minority stakes and itself

be a minority shareholder. *Pamela* is a share valuation of a minority interest in a company owned by an EOT. **Malcolm Hurlston**, the founder of the Esop Centre, who framed WEG, said: "Publication of the EOT worked example is a significant moment in our working with HMRC. The number of EOT transactions is on the rise and the Trust will more often than not have a majority stake. "Other worked examples are in the pipeline and practitioners are encouraged to submit suggestions to: weg@esopcentre.com I would like to thank Tony Spindler for helping William Franklin to establish the group and Barry Roland for taking it forward with William and the Centre." The valuation of unquoted shares can be complex and this guidance is aimed at those with the most straightforward circumstances in low tax risk situations, said Mr Franklin. This should not necessarily be regarded as authoritative, exhaustive or definitive, but as an illustration of what might be acceptable to SAV for the purpose of agreeing valuations.

UK CORNER

UK listed company agm on yacht in Gibraltar

*__GVC Holdings__ held its agm on a super-yacht in **Gibraltar**, almost a thousand miles away from its UK base and many of its shareholders. As parent company to betting groups such as **Ladbrokes, Coral** and **Foxy Bingo**, GVC operates mainly from the UK and the Isle of Man. The company held its agm aboard the yacht-cum-hotel *Sunborn* - a meeting lasting less than 15 minutes. Despite shareholder concerns over directors' reward, just eight attended the agm, all of them GVC staff and company registrars. No investors flew to Gibraltar to question them. However, almost 42 percent of GVC shareholders voted against the reward of ceo Kenny Alexander, who netted £19.1m last year, taking his earnings over three years to ***£55.2m***. Alexander said that the company regularly held its agms in Gibraltar. Despite their impressive reward packages, GVC's chair, Lee Feldman, and Mr

Alexander, managed to avoid questions over their remuneration from investors this year. Earlier, Alexander turned down a £150,000 bonus linked to achieved mergers. His total reward last year was £19.1m, thanks to a legacy award from when the company took over **bwin.party** in 2015. The bonus cut was intended to appease shareholders. Feldman was paid £8.5m in 2018 on top of the £8.9m he collected in 2017 and £7.4m in 2016. His earnings over the last three years have continued to rise and topped £55m for the period. Unlike most agms, the board answered no questions, although Alexander maintains that they were not avoiding anyone. He said afterwards: "*If you think we're running away from shareholders, that's not the case. We hold every board meeting in Gibraltar and we talk to shareholders a lot.*" In March, Feldman and Alexander sold £20m worth of shares, causing GVC's share price to drop by a fifth. Carolyn Harris MP, chairman of the all-party parliamentary group for *Gambling Related Harm,* is demanding tough action by GVC regarding its remuneration policy. She said: *"This is yet another example of unaccountable executive pay spiralling out of control in the online gambling sector while families continue to be harmed by this industry. We have asked GVC to appear in front of us to explain their behaviour and we will be demanding tough action*." The Ladbrokes acquisition helped GVC more than treble its revenues last year to almost £3bn, but it made a pre-tax loss of £19m.

*The **Church of England** paid record bonuses of more than £1m last year to the asset managers who look after its wealth. The CoE's highest ever 'incentive payments' were made even though the Church's financial arm failed to meet its investment targets and the value of its holdings, worth more than £8bn, shrank. They were paid despite the protests by senior churchmen that high salaries, generous pay rises and big bonuses for bank executives are a cause of inequality and damage social stability. The Church's own guidelines for other businesses call for bonuses to be paid only in company shares. Among the bonuses paid out last year was £256,000 to Tom Joy, the investment chief at the **Church Commissioners**. Joy's bonus was another record for the Church. He was given an increase of six percent on his basic salary to take it to £280,000. The pay rise, of almost three times the level of inflation, meant that he received a total of £536,000 last year. By contrast the benchmark stipend for a vicar last year was almost 20 times lower at £25,950, a level that was raised by three percent on the previous year. The scale of bonuses was revealed in the Commissioners' report for 2018, which showed that the organisation's investments and property holdings dropped in value from £8.3bn to £8.2bn. A major reason for that was investment managers achieving a return of only 1.8 percent, below inflation and well below their target of five percent over inflation.

Roadchef

The former **Roadchef** motorway services station Esop employee participants are split over whether to demand formally their long-sought compensation now or wait until a final tax battle between their EBT trustee and HMRC is settled.

Patience is wearing thin among surviving Roadchef Esop participants, some now in their late 60s, because it is five and a half years since a High Court judge ruled that they must be compensated for the improper transfer of their employee shares from one trust to another, before being sold to a Japanese company without their knowledge 20 years ago.

The Roadchef EBT1 trustee, Christopher Winston Smith, of lawyers *Reed Smith,* recently updated the Roadchef beneficiaries to inform them that only a dispute with HMRC about whether the payments should be taxed was delaying the distribution of their compensation pots. Mr Winston Smith told them that he intends to fight on - as far as the High Court again, if necessary - in order to get authorisation for the payments to be made free of tax.

A majority of those Roadchef Esop beneficiaries who have contacted *newspad* during the seemingly never-ending compensation battle say they would prefer to be paid what they are owed now, even though their varying amounts would be taxed. However, not all agree. Some want to know first how much they are likely to receive, while others prefer to wait until the tax issue is finally settled.

A key issue is whether or not the trustee has a fiduciary duty in law to consult the beneficiaries as to whether they should be paid now, or whether he can plough on until the tax issue is finally resolved, which could take many months.

Employee share schemes expert and tax barrister, **David Pett**, of **Temple Tax Chambers,*** poured cold water over the chances of groups of Roadchef beneficiaries winning immediate payment of their compensation pots. Mr Pett told newspad that without a copy of the original Roadchef Esop trust deed, he was unable to give a view on the specific point, of whether consultation may be necessary, as that would be dependent upon the terms of trust deed. However, he added: *"In the absence of any express power or duty on the trustees to seek the views, consent or confirmation of any members of the class of discretionary beneficiaries, the normal position would be that such a decision is that of the trustees themselves having regard to the best interests of the beneficiaries as a class, and* ***is not a decision which may be delegated to all or any such members of the class of beneficiaries. As a general rule, trustees cannot delegate their powers.***

"The difficulty with an employees' discretionary trust is that the class of beneficiaries is normally defined to include ***employees past, present and future, as well as their respective dependants.*** *It is therefore impossible to identify and seek the consent of all such members. This was one of the reasons which resulted in* ***Baxi*** *having to secure a private Act of Parliament to effect a change to their trust."* David, a Centre steercom member, said that if the trustees wanted to base their decision upon a poll of those beneficiaries intended to benefit from a payout, the trustees might consider an application to the Court under ***section 57 of the Trustee Act and/or under the 'rule in Public Trustee v Cooper'*** to seek the court's approval of such a decision. Whether such an application would be necessary or appropriate would again depend upon the terms of the trust deed(s).

The tax issue is real because some of the individual compensation pots of the former Esop participants are expected to be substantial. The Capital Gains Tax (CGT) exemption in the current 2019-20 tax year is only £12,000, which is the amount of profit an individual can make from an asset – e.g. gains from share sales – during this tax year before tax is payable. Above this trigger point, basic rate taxpayers pay CGT on their gains at only ten percent, but higher rate taxpayers pay CGT at 20 percent. While most Roadchef beneficiaries do not own other assets which are subject to CGT, the trustee has not yet informed them how big their compensation payments will be.

One former Esop participant and beneficiary, Audrey Mclear, told *newspad:* "*I would like my money now and am quite willing to pay tax. It should be the beneficiaries' choice and it should be put to a vote. It should not be one man's choice and opinion. Why were we never paid out on the money they already have and then just give us another payment when they win the tax money back? What can we do to make this happen now?"*

However another beneficiary, Margaret from Scotland, told *newspad* that when she asked her group of former Roadchef Esop participants whether to push for immediate payment, regardless of tax, the answers she got were mixed: "*Some of us are willing to put our names in favour of payment now and some aren't. They think the tax would be a lot. Others said maybe. They worry about the lack of info from the trustees as to the amounts and if it had to go back to court what would the legal costs be and the time scale? They also said our group probably would not be enough to sway the trustees in any way. Myself and another couple are totally disappointed in these reactions."*

Another beneficiary, Susan, said she too needed more information before deciding whether to demand immediate payment or not: "*At the moment I am unable to answer your question one way or the other for two reasons. I have heard from my MP, Rory Stewart, who is going to write to HMRC on my behalf, so I need to wait and see what response he receives. No one knows how much they are actually going to get, so it is very difficult to make a decision without any figures."*

After the High Court ruling, Tim Ingram-Hill, the former chairman and ceo of Roadchef, negotiated with the Roadchef EBT1 trustee to pay in a large sum as compensation to be divided up among the c.350 surviving former Roadchef Esop participants. Some believe the sum paid in could be as high as £20m, though this has never been confirmed. To the pot must be added up to £10m more, which the trustee managed to recoup from HMRC for the benefit of the beneficiaries.

Time was lost due to the vagueness of the original trust document as to who the beneficiaries were. In an out-of-court settlement, the lawyers agreed that 61 percent of the pot should go to the original Esop participants; nine percent to colleagues, including part-timers, who did not/could not, join the Esop and the balance, 30 percent, should go to employees who had worked for Roadchef more recently.

*David's coordinates: **David Pett**, **Barrister** Tel:

+44(0) 207 353 7884 Mob: 07836 657658
Email:david.pett@templetax.com

Uptick in UK Esop usage

There has been a three percentage points increase over the past year in the percentage of UK companies who offer shares or share options to all their full-time staff. However, 60 percent of respondent companies in the *Employee Benefits* e-magazine survey still do not offer any kind of employee equity. The *Benefits research 2019*, which canvassed the views of 290 HR professionals and was published in May this year, found that only 25 percent of their companies provide shares or share options for all staff, compared with 22 percent that did so in the previous year, while 12 percent offer them only to senior or executive staff, decreasing slightly from 15 percent in 2018. A further three percent said their companies had plans to introduce employee equity plans shortly. Among those that do provide shares for their employees, the largest proportion (43 percent) provide long-term incentive plans (LTIPs), in which performance targets must be met in order to vest. While the LTIP remains the most popular type of scheme, its usage dropped by 15 percentage points since last year, according to the survey. The next most commonly used share option plan used by these companies is the all-employee Sharesave-SAYE. However, even use of this savings-related share scheme, allowing employees to save up to £500 a month, with the option of buying shares at the end of the savings contract, dropped by seven percentage points during the year to end March. The usage of both the Share Incentive Plan (SIP) and the Company Share Option Plan (CSOP) registered a few percentage points behind SAYE. The research, conducted last March, received 290 responses. Of the respondent companies, 60 percent are privately owned, 19 percent quoted companies, 13 percent public sector and seven percent voluntary sector.

Share plans filing deadline days away

The deadline for filing the 2018-19 share schemes annual returns is just days away – at midnight **July 6**, warned Centre member **Pett Franklin.** This applies to any new share schemes established, or any ‘reportable events’ which have occurred under existing share schemes, in the 2018-19 fiscal year. Even if a share scheme has been already registered and even if no events have taken place, a ‘nil return’ still needs to be filed for the year. Penalties will apply for late filing, so returns should be filed ***immediately***, as HMRC does not send out reminders. The scheme must be registered through HMRC’s **PAYE Online Services Portal**. Only one annual return needs to be filed for each scheme, so for group companies, only one company within the group needs to submit a return, even if employees from multiple companies are participating. Reportable events include: *Acquisition of shares, or interests in shares, by an employee *Grant of options to an employee *An employee’s exercise of share options *Receipt of a benefit in cash or equivalent for an employee share option *Assignment or release for sale of an employee share option *The falling away of restrictions attaching to employee shares *Sale of restricted securities by an employee* Other events which create a tax charge from employment-related securities Share plan sponsors should take advice, if not certain, whether an event is reportable. Events within a qualifying EMI, SIP, CSOP or SAYE scheme should be reported online to HMRC. However, each of these schemes has its own online annual return which should be filed separately. New tax-advantaged schemes must be ***registered*** with HMRC before an annual return can be filed – this could take up to a week to process, so you should make sure to register well before the deadline.

*Have you provided shares or options to: employees; directors; non-executive directors; or consultants by virtue of their employment? Have you undergone a share buy-back which resulted in employees or directors gaining an increase? Have you notified HMRC that your company has given EMI options or CSOPs to your employees? asked **Catherine Gannon** of **Gannons Commercial Law.** “If the answer to any of the above is *Yes*, then you will need to file an employer’s tax return with HMRC by midnight on July 6,” she warned. Only notify HMRC of the events that involve employment related securities. Inaccuracies in returns can result in penalties of up to £5,000. More information about employment related securities, the pitfalls and how to file an annual return can be found at https://www.gannons.co.uk/insights/employment-related-securities-filing-deadline/

EBTs and new loan charge deadline

A significant number of people caught by the controversial *Disguised Remuneration* ‘loan charge’ legislation are still refusing to pay up, despite repeated penalty warnings from **HMRC**.

For while the latter is having considerable success in recovering lost tax from *employers* who used disguised remuneration schemes, it is finding it harder to extract back payment from scheme users who, for example, work in the business services sector, including IT and management consultants.

In two recent *Spotlight* publications, HMRC warned of a further clampdown on newer versions of what it considers to be tax and NICs payment avoidance. HMRC said in its latest loan charge guidance that the loan charge policy package was expected to raise £3.2bn, with 75 percent of this sum coming from employers and 25 percent from individuals. Since the loan charge was announced at Budget 2016, HMRC has agreed settlements on disguised remuneration schemes with employers and individuals worth more than £1bn of tax and NICs owed. However, it recently admitted: *"Around 85 percent of this came from settlements with employers and 15 percent from settlements with individuals."* So it is clear that many individuals landed with huge back-dated loan charge tax bills are digging their heels in, determined to fight it out in court, if necessary. HMRC has responded to concerns about the retrospective nature of the tax demands by fixing a new deadline for scheme users to come forward and regularise their accounts.

The tax battle over disguised remuneration schemes is of interest to many Centre members because, typically, an employee benefit trust (or even two of them, sometimes offshore) is set up to warehouse finance for loans which are paid out to individuals often linked with the provision of sub-contracted services.

HMRC is waving both a carrot and a stick at those who have not settled up. It said in the guidance: "*All individuals who have outstanding disguised remuneration loan balances, and have not reached a settlement,* ***must provide information on their loans*** *to HMRC by* ***September 30 2019****. They will need to file a tax return for the year 2018 to 2019 by* ***January 31 2020."***

Those scheme users who provided all the information needed to HMRC by April 5 this year, can settle their tax affairs under the less onerous November 2017 terms. **If settlement is not reached by the date specified in each offer letter from HMRC, the November 2017 terms will no longer apply and those users will have to pay the stiff loan charge financial penalties.**

HMRC said: "*Disguised remuneration schemes are tax avoidance arrangements that seek to avoid Income Tax and National Insurance contributions*

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(NICs) by paying scheme users their income in the form of loans. The loans were never intended to be repaid, so they are no different to normal income and are taxable. The charge on outstanding disguised remuneration loans – the 'loan charge' - was introduced to tackle the use of disguised remuneration schemes and came into effect on April 5 2019. ***The charge applies to all loans made since April 6 1999 if they were still outstanding on April 5 2019 and the recipient had not settled the tax due."***

For those scheme users settling under the November 2017 terms, HMRC has simplified the payment arrangements. Those no longer involved in tax avoidance and whose current year taxable income is less than £50,000, won't have to provide detailed supporting information about their income and assets and will automatically be able to spread their payments over five years, and over seven years if their income is less than £30,000. Those with a current year taxable income of £50,000 or more, or who need to pay over a longer period, can ask for extended payment periods. However, they will need to provide additional information so that a payment plan can be agreed.

Where a scheme user was an employee and the employer still existed and was in the UK, HMRC collected the loan charge from the employer through the PAYE system. Where a scheme user was not an employee, or the employer was offshore or no longer existed, the individual user needed to pay any outstanding loan charge liability or agree a payment plan by January 31 2020.

HMRC said that it had formed a dedicated team, focused on working with those who are not able to pay the charge on disguised remuneration loans by the payment deadline and supporting them by agreeing manageable payment plans. HMRC promised not to force anyone to sell their main home to pay their disguised remuneration debts or the loan charge. It said that it did not want to make anybody bankrupt.

HMRC** further warned that a *Profits-Free-Of-Tax* scheme did not work and that its promoters and users would be challenged, in court, if necessary, reported Centre member **Deloitte.** HMRC rammed home the message in its ***Spotlights 51 and ***52***: dealing with tax avoidance using loans or fiduciary receipts and offshore trusts. In Spotlight 51, **HMRC** said it was aware of "a tax avoidance scheme often marketed as a wealth management strategy that attempted to disguise income and other taxable profits as loans

WHITE & CASE

or fiduciary receipts. This scheme claimed to provide remuneration or profits free of tax and is different to the scheme used by contractors (see *Spotlight 33*). "**HMRC's strong view is that this and similar schemes do not work. We will challenge the promoters and users of this scheme**. The scheme user contributed to a remuneration trust, with trustees based offshore. The user could be: a self-employed individual; a partner in a partnership; a company or a company director. "The remuneration trust is set up in a contrived manner and claimed to provide benefits to individuals (beneficiaries), *other than the scheme user*. The alleged beneficiaries are individuals employed in lending money. *The trustees take no action to identify or reward the alleged beneficiaries, because the trust contributions are always intended to be used by the scheme user.* As part of the scheme arrangements, a personal management company is set up and controlled either by the scheme user or a connected party. The money contributed to the remuneration trust is actually paid - often minus the ten percent scheme fee - to the personal management company. This allows the scheme user full access to the funds. The user accesses the contribution to the remuneration trust through unsecured loans or fiduciary receipts from the personal management company. It is claimed to be tax free and on terms not available from high street lenders. Interest and capital repayments on the loans are rarely made. The receipts from the personal management company are often used by scheme users as living expenses. In some cases, the scheme user decides how the money is invested by the personal management company. The scheme is marketed by firms offering wealth management strategies. HMRC believes that scheme users are told that they will always remain in control of the funds.

"HMRC's view is that the claims made by scheme promoters about the tax savings are not credible or genuine. Users may find that: Corporation Tax, PAYE tax, NICs and Inheritance Tax are all chargeable for company and company director users; Deductions claimed by self-employed individuals and partnerships are not

allowable expenses, and Inheritance Tax is chargeable. Users will be charged interest on any tax paid after the statutory due date, and may face penalty charges. HMRC will pursue anyone who promotes or enables tax avoidance. This includes using the enabler's penalty regime for anyone who designs, sells or enables the use of abusive tax avoidance arrangements which are later defeated by HMRC." It will use powers under the **Promoters of Tax Avoidance Schemes** regime against those who promote such tax avoidance schemes. HMRC strongly advised those using such schemes to withdraw from them and settle their tax affairs, to avoid the costs of investigation and litigation; minimise interest and, where they apply, penalty charges on the tax which should have been paid HMRC is considering whether the **General anti-abuse rule (GAAR)** may apply to this scheme. Transactions after September 14, 2016, where the GAAR applies, will be subject to a **60 percent** GAAR penalty. For transactions after November 16, 2017, penalties may be charged because of carelessness, unless reasonable care can be shown. Those who do not have an HMRC contact and are in a tax avoidance scheme and want to get out can email: ca.c14.admin@hmrc.gov.uk.

Spotlight 52 - *Tax avoidance using offshore trusts* - highlights two cases in which the **First-Tier Tribunal** decided that the disguised remuneration arrangements being promoted were notifiable under the **Disclosure of Tax Avoidance Schemes (DOTAS)** legislation. In both cases, the arrangements were designed to disguise income for which tax and NICs would be due. HMRC say that these decisions confirm their view that contrived arrangements involving employment income related loans are notifiable under DOTAS. They repeat their previous warnings that they will pursue anyone who promotes or enables tax avoidance. See https://deloi.tt/2HsfEQx

In *HMRC v Hyrax Resourcing Limited* and *HMRC v Curzon Capital Limited [2019] TC06949* the FTT decided that the disguised remuneration (DR) arrangements being promoted were notifiable under the DOTAS legislation. *The arrangements used involved individuals receiving earnings by way of a small taxable element and the rest as a loan which was ultimately owed to an offshore benefit trust in a low or no tax jurisdiction. *The loans are provided on terms that mean they are not repaid in practice. In Spotlight, HMRC said that the FTT decisions confirmed its view that contrived arrangements involving employment income related loans were notifiable under DOTAS and reminded scheme users that: Following a DOTAS notification, HMRC may issue **Accelerated Payment Notices** to rake in the disputed tax and NICs immediately. This was the sixth spotlight issued by HMRC in the past six months dealing with disguised remuneration schemes. HMRC urged scheme users to contact them about settlement and the deadline for completing a settlement on *these* types of arrangements was now **August 31 2019**.

Boost for shareholder democracy

*The **Department for Business, Energy & Industrial Strategy (BEIS)** asked the **Law Commission** to investigate, *inter alia,* the system of nominee shareholder accounts, which often makes it difficult for shareholders to exercise voting rights and to participate in company agms. The Commission will report back to BEIS when it has identified potential avenues for legal reform, a move welcomed by Centre member **UK Shareholders Association (UKSA),** which has campaigned on the issue for many years. "Chief among our concerns is the nominee system whereby we are the beneficial owners but not the legal owners of the shares we buy," said Cliff Weight, director of **ShareSoc**, which is shortly to merge with UKSA. "The legal owner is the intermediary, in other words the nominee. As a consequence we have difficulty exercising voting rights and participating at agms. That is bad not just for us as individuals but also for companies' engagement with individual shareholders. Twelve million UK investors should be pleased that this review will look at reforms needed to ensure legal redress is available when needed. This will help ensure better transparency for investors and accountability of directors to their beneficial owners." UKSA policy director Peter Parry said: "Shareholder rights have been eroded through the way the nominee system has been implemented. It is now timely to see how best these rights can be restored. A system where the end investor is clearly recognised in law and shown on the shareholder register will be a great improvement. It is a fundamental prerequisite of shareholder democracy." The Centre is examining voting

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levels among employee shareholders which informal sample studies show to be we exceptionally low.

*UKSA and ShareSoc used a meeting with the **Financial Reporting Council (FRC)** to demand greater use of technology in the way corporate information – e.g. annual reports and prospectuses – is given to individual shareholders, in order to put them on level footing with institutional shareholders. The FRC project aims to promote brevity, comprehensibility and usefulness in corporate reporting and it will recommend changes to regulation and practice. UKSA and ShareSoc members point to the fact that private investors do not have access to pathfinder prospectuses and that this gives institutional investors an unfair advantage. Members say that many annual reports are now far too long (when detail could be left instead on the company's website) and yet crucial content in many prospectuses is missing – particularly disclosure of long term debt obligations and the interest-rate risk associated with these. It was agreed that the FRC should discuss changes to prospectus requirements with the **Financial Conduct Authority.**

*A team at *myGatehouse* (*myG)* in Guernsey is working on an innovative product called *ShareSafe*, which gives a voice to retail investors across the UK and beyond. ShareSafe, via its app for *iPad* or *Android* device, delivers into the palm of one's hand direct control of one's CREST Personal Account in which investors hold electronic title to their own securities registered in their names and addresses, thus providing an easy solution for retail investors wanting to exercise their voting rights and gain access to their shareholder benefits. ShareSafe uses the same capability that City institutions and platforms have been using since 1996 to hold title to shares electronically for themselves and on behalf of some eight million nominee clients.

Public access to company ownership registers

The **Crown Dependencies** (Guernsey, Jersey and the Isle of Man) are set to bring forward their own legislation to grant public access to a central register revealing the true ownership of firms incorporated there**.** The three have been under pressure to dispel their historic image, in the minds of some, as havens for tax secrecy. The move was anticipated by the UK's promise last year to order the **Overseas Territories**, such as the Cayman Islands and the British Virgin Islands, get serious about making public basic information about the ownership of companies registered

there. The Crown Dependencies issued a joint statement setting out a stepped approach to making such registers open to public inspection. During 2021, the three jurisdictions undertake to work collaboratively with the EU on connecting their registers of beneficial ownership of companies with those in the EU. They will then open access to their central registers of ownership of companies in financial services and other designated businesses for due diligence purposes as soon as reasonably practicable following stage one, and, in any event before the end of 2022 and bring forward legislation for public registers within 12 months of the EU's planned review of implementation of the fifth EU Anti-Money Laundering Directive, which is due in January 2022. Guernsey's chief minister, **Gavin St Pier,** a former Centre steercom member, said the move

Gavin St Pier

towards a public register of beneficial ownership would become an international norm. A "detailed action plan" demonstrating how Guernsey will respond to global developments is due to follow. The move was welcomed by PM Theresa May in the Commons, while campaigners said the decision to improve the transparency of company ownership across Jersey, Guernsey and the Isle of Man may begin to shift the broader perception of

traditional tax havens. However, Labour MP Margaret Hodge and Tory MP Andrew Mitchell, who head a cross-party MPs pressure group, said the announcement was a first step towards ensuring greater transparency, but they threatened to continue their campaign for UK legislation unless aspects of the proposal were clarified. They said the timetable for implementing the new registers by 2023 was "unacceptably long," the proposals would grant banks and accountants access to the information before the public and the media and it was unclear whether the data would be available free of charge. "*Until we receive the assurances we need and that we have set out, we will pursue our plans to introduce legislation enforcing open registers of beneficial ownership in these jurisdictions,"* they said. UK ministers originally had wanted the Dependencies to agree to publish public share ownership records by December 2020, but buckled under the weight of reasoned opposition. As the Crown Dependencies are not subject to EU laws, they are unaffected by last year's fifth anti-money laundering directive which dictates that any member of the public can have access to beneficial ownership information held in a register for corporate and other legal entities. The directive will be adopted as UK law soon.

Brexit judgment

The EC's Notice to Stakeholders in March this year confirmed UK analysis on the impact of Brexit on **European Worker Councils (EWCs**) currently governed by UK law, said Centre member **Lewis Silkin**. In summary, the EC considers that a no-deal Brexit would have the following consequences: *The EWC Directive will cease to apply to the UK. If a corporate group no longer has 1,000 jobs in EU member states then, even if an EWC is already established, the group will no longer be subject to the Directive (although the EWC may continue to exist under national law). *UK employees may continue to be represented on an EWC if that is provided for in the EWC agreement *If a corporate group's central management or representative agent is currently in the UK, that management role will be transferred to an EU member state. This responsibility is transferred automatically and immediately as of the UK withdrawal date. *The law applicable to an EWC agreement is that of the member state where the central management, or its representative agent, is situated in the EU. So where UK law has applied to an existing EWC, as of the withdrawal date, the law of a remaining member state will apply automatically and immediately. This is to ensure that the rights of employees in remaining member states remain enforceable. *The EC's Notice therefore confirms that, even in the event of a no-deal Brexit, ***EWCs will continue to exist and operate so as to ensure that the rights of employees in remaining EU member states are not prejudiced.*** It supports our advice that management should proactively designate a new representative agent in a remaining EU member state, in order to avoid governing law based solely on headcount numbers on an arbitrary date in the future, said Lewis Silkin.

*Businesses should use the time left before **October 31** to re-engage with their no deal planning and ensure they are up-to-date on developments in the EU-27 Member States in which they trade. A new **House of Commons Library** briefing paper contains a summary of measures undertaken. Tax authorities are applying general tax principles when reviewing Brexit-related restructuring, VAT registrations, social security, ruling applications etc. Where there is scope for unilateral action, some member states are drafting legislation in relation to a possible no-deal scenario. For example, Dutch transitional rules in a no-deal Brexit would mean that, from a tax perspective, the UK is treated as an EU Member State for specific taxes (excluding customs duties). Belgium would, in a no deal scenario, treat the UK as if it were a member of the EU for certain tax rules e.g. income taxes, for a transitional period, subject to a condition of reciprocity from the UK.

COMPANIES

*Almost ***30 percent*** of **Barclays** shareholders' votes at the agm went against executive pay plans after a whistle-blowing scandal involving ceo, Jes Staley. More than 3.65 bn voting shares, equivalent to **29.21** percent of the total votes cast were against approving the directors' remuneration report for the 2018 calendar year. As a result, Barclays became the latest big name in the banking sector to enter the **Investment Association**'s *Sin Bin* for having more than 20 percent of shareholders' voting shares cast against a key agm resolution. (a link to the '*Sin Bin*' can be found at http://esopcentre.co.uk/news/newspad/). Shareholder advisory group ISS had criticised the measures taken by Barclays following Staley's attempts to unmask a whistleblower in 2016 and advised shareholders to vote down the remuneration report at the agm. Staley was fined £642,430 and his bonus was cut by £500,000. As a result of a separate investigation by the New York Department of Financial

Services, Barclays was fined £11.6m in December last year, but despite its conclusion, Staley's fines remained unchanged. ISS said the penalties to Staley's pay did not go far enough given the reputational and financial damage to Barclays and the loss of shareholder funds. Barclays said the board had made a significant malus adjustment to Staley's compensation following an independent investigation and regulator probes and that the NYDFS conclusion "did not reveal any new facts." It accepted that its investment bank was not performing "at the level which it should."

*The ceo of house-builder **MJ Gleeson** stepped down in a bust-up over his annual reward which last year stood at £2.9m. The developer, which specialises in building affordable homes in the North and land regeneration, said: 'Following extensive discussions with Mr Harrison regarding his remuneration and succession planning, the board concluded that it was not possible to find a mutually acceptable basis for Mr Harrison to continue as ceo.' Harrison, who left the company immediately, had been in charge since July 2012, having joined its board in 2010, and has been paid about £12m in total, according to its annual report. House-builders have been accused of making inflated profits thanks to the Government's *Help to Buy* scheme, which lends buyers up to 20 percent of a property's purchase price in a five-year interest-free loan. MJ Gleeson sells 66 percent of its homes through Help to Buy, but it has been praised for growing while building affordable homes, which sell for an average of £127,000. Its half-year report in February showed six-month revenue up 52.8 percent from £77.4m to £118.3m and pre-tax profits rising from £13.7m to £22.3m.

***Sundar Pichai** was one of the world's highest-paid corporate executives, but the **Google** ceo hasn't received an equity award in more than two years. Pichai, 46, turned down a big new grant of restricted stock last year because he felt he was already paid generously. Another huge payday -- on top of hundreds of millions of dollars in previous awards -- could have sparked more controversy for the mild-mannered executive. "He may have looked at these numbers and said: 'I've had enough' -- or he might just be trying to manage the optics of his pay," said David Larcker, professor of corporate governance at **Stanford** Graduate School of Business. The board of Google parent **Alphabet** is scheduled to re-examine the ceo's pay later this year. By then, almost all Pichai's previous stock awards will have vested.

*Only 72 per cent of **JPMorgan Chase** shareholders endorsed the executive reward proposals at the bank's agm in Chicago, down from the 93 percent who backed its pay policies a year ago and the worst "*say on pay*" result the company faced since 2015. Four years after ceo Jamie Dimon slammed "lazy" investors for taking their lead from proxy advisers, guidance from a major adviser has again triggered a significant protest vote against how the bank pays its top executives. ISS issued a circular last month citing concerns about vague or subjective criteria used to calculate bonuses for JPMorgan's top five executives who were collectively awarded **$110.5m** last year, including a **$31m** package that made Mr Dimon Wall Street's best paid banking boss. ISS raised concerns, claiming investors "*increasingly prefer an incentive programme structure that constrains discretion in favour of emphasis on objective and transparent determinations that are more compatible with pay-for-performance."* The shareholder revolt at JPMorgan this year contrasted with votes at the bank's peers. **Goldman Sachs** and **Citigroup** both got the thumbs up from more than 90 percent of voting investors at their latest round of "*say on pay*" votes, which all banks must hold under the post-financial crisis Dodd-Frank rules. JPMorgan's agm revealed a fall in shareholders' support for the bank's non-executive directors too.

Lloyds Banking Group** staff are happy with the ceo António Horta-Osório's ***£6.3m reward package because they see him as "a winner" with charisma, the chair of the bank's remuneration committee has told MPs. Addressing the work and pensions committee, Stuart Sinclair claimed there was no discernible resentment among workers about the gap between the pay and pensions of those at the top of the organisation and the rest of the workforce. "*I don't see that sort of discord. People like a winner. And when I go out to see people on £22,000, £30,000, £40,000, they see António as a winner because he brought this bank back from the brink … and people regard that as a big achievement*. There is a charisma around António which actually means a lot of people say: '*Good luck to him. He works incredibly hard and I don't resent the money.'"* However, Sinclair's comments angered some employees. Lloyds has made thousands of workers redundant in recent months and has closed branches across the country as the bank tries to reduce its costs, faced with a decline in face-to-face banking. The bank has irked some employees with cuts to staff benefits,

including putting subsidised mortgages offered to staff under review after March 2020

*Measured against the major shareholder executive pay revolts at both Barclays and JP Morgan, the fund manager **Schroders** escaped relatively lightly at its agm, where 12 percent of shareholder votes were cast against its remuneration report. Advisory firm **Glass Lewis** issued a warning about "*excessive*" bonuses and the appointment of a Schroder family member to its board - Leonie Schroder - claiming she lacked the experience needed to challenge the firm's executive team. The advisory group said it had severe reservations about supporting the pay report due to the size of the bonuses granted to ceo Peter Harrison, who has been at the helm since 2016. He was given a £6m bonus last year on a £500,000 salary. "We remain concerned that the annual bonus plan has consistently led to unnecessarily high payouts," Schroders said the company had a "clear and thorough process" for determining pay, "which we have followed rigorously and which has served the firm and all its stakeholders well over many years.'' The Schroder family holds a 35 percent stake in the business.

***Marks & Spencer**'s ceo Steve Rowe received a 48 percent rise in overall reward for the year, despite the retailer revealing its third consecutive decline in full year profits. With pre-tax profit down 9.9 percent for the year as the retailer's restructuring plans take hold, all staff bonuses were cancelled across the company due to missed targets. However, due to a long-term bonus payout of £621,000 relating to a target Rowe achieved in 2016, his total pay for the year rose to £1.7m, compared to £1.1m a year before. M&S's board decided to give Rowe a £24,500 pay rise to his basic salary of £810,000, noting that he had not received a basic pay rise since 2016. Rowe has use of a car and a chauffeur as part of his reward package. Cfo Humphrey Singer was given a pay rise for next year of two percent, taking his basic pay to £612,000.

*The ceo of Britain's largest building society received benefits worth more than £500 a day to cover the cost of travel, security and medical expenses. Joe Garner 49 of **Nationwide** obtained £185,000 in perks during the 12 months to April 4, according to the group's latest annual report. They equate to almost £507 for every day of the year and were in addition to his £885,000 salary, £292,000 pension allowance and £1m bonus. These took his total remuneration for the year to £2.37m, up from £2.32m a year earlier, even as pre-tax profits at the mutual fell by 15 percent to £833m.

*Supermarket giant **Sainsbury's** has been blasted for 'rewarding failure' by handing bumper rewards to ceo Mike Coupe despite an abrupt end to his attempted merger with Asda. His plan to create a £50bn grocery giant was quashed by the **Competition and Markets Authority (CMA)** in April. The shares have since plummeted to a 30-year low. Coupe caused outrage after he was caught on camera singing *We're In The Money,* the day the firm announced its merger plan. He received £3.9m, seven percent more than he received a year earlier. This was not far below the £4.6m earned by **Tesco**'s Dave Lewis, who has been lauded for reviving his firm's fortunes. Shareholder advisory body Glass Lewis challenged Sainsbury's board and remuneration committee to explain the size of executive bonuses following the shares crash. *'The committee have failed to outline the impact, if any, of the failed deal on the bonus outcomes of the executives, particularly in light of share price performance as a direct result.' It said the reward could represent 'divergence of bonus outcome from shareholder experience'.* Shareholders are due to vote on executive rewards at the firm's agm on July 4. Coupe is likely to face questions about the collapse of the share price to below £2. Siobhain McDonagh MP said Coupe should consider surrendering some or all his bonus. *'Executive bonuses are supposed to be about rewarding success, but what we repeatedly do in corporate Britain is reward failure*,' she said. Last year, Sainsbury's was accused of cutting pay for 9,000 staff after it said it would reduce overtime premiums and scrap paid breaks for long-serving workers. The contract change came as it lifted hourly pay. Sainsbury's chairman, Martin Scicluna, said the failed merger was 'not a cock-up'. He said the CMA made its decision despite the 'very good job' the grocer did presenting its case. Sainsbury's said: 'Executive pay is set by the remuneration committee and bonuses are subject to stretching targets. The business has hit a number of targets this year, including increasing profit, reducing net debt and increasing the dividend, which is why we have paid a bonus to eligible colleagues. Underlying profits rose during the year, but when one-off costs were included, profits fell 42 percent to £239m.

***Suzuki** chairman Osamu Suzuki will not receive executive remuneration for a one-year period starting in July as part of disciplinary measures following revelations of improper vehicle inspections, the automaker said. In addition,

president Toshihiro Suzuki will receive a 50 percent pay cut for six months. The chairman and president will decline their annual bonuses for fiscal 2018. Chairman Suzuki himself refused to receive pay, the company said. He earned ¥220m (£1.6m) in fiscal year 2017, including ¥93m as a bonus. "*We will make all-out efforts to ensure legal compliance,"* he said. The company's irregularities include inspections by unqualified workers. Suzuki dismissed Hiroaki Matsuura, director and managing officer in charge of vehicle inspections. He resigned as managing officer and left the board on June 27 after the company's agm. The automaker punished other managers involved in the improper inspections, but declined to elaborate.

***Walmart** shareholders rebuffed calls at its agm to shake up its executive pay, boardroom composition and approach to workplace sexual harassment. The meeting was gate-crashed by leading Democratic presidential candidate **Bernie Sanders**. Shareholders voted to approve the compensation of Walmart's named executives, as per its 2019 proxy statement, with almost **91 percent** of the voting shares cast in favour of this proposal. This was despite shareholder advisory groups recommending votes against the world's biggest retailer at the Arkansas gathering. **Glass Lewis** advised investors to vote against Walmart's remuneration plans, citing a "pay and performance disconnect". Doug McMillon, ceo, was handed a $23.6m package for last year. **Institutional Shareholder Services** backed the pay plan but threw its weight behind an investor motion urging Walmart to strengthen board oversight to prevent workplace sexual harassment. Sanders, the leftwing Vermont senator who put Walmart at the centre of his campaign to strengthen worker rights, demanded that employees be represented on its board. *None of these motions, however, were passed*. Walmart, which employs 2.2m people globally, including many thousands in its UK **ASDA** stores, gave the average employee a pay rise last year of **14.5 percent**. The median employee received $21,952 in the year to the end of January, up from $19,177 the previous year. Mr McMillon received about 1,000 times more. His total package, including salary, performance-dependent bonuses and other benefits, rose 3.6 percent. Judith McKenna, the former **Asda** executive promoted to run Walmart's international business, received a $12.9m package. US division chief Greg Foran received $13.5m and cfo Brett Biggs $9.4m. Walmart said its pay plans were designed to motivate and retain top executives "with the ultimate goal of generating strong operating results". The retailer generated operating income of $22bn last year on revenues that rose 2.8 percent to $515bn. Ecommerce sales rose 40 percent. Glass Lewis, however, noted total shareholder returns last year fell eight percent and said it did not believe Walmart's scheme "sufficiently aligns pay with performance." In particular, it criticised the company's LTIP.

WORLD NEWSPAD

*On July 21, the remaining provisions of the **Prospectus Regulation** will become effective across the EU. These provisions include: *a fast-track approval process for frequent issuers who maintain an annual universal registration document, which is a new form of shelf registration process; *simplified disclosure requirements for follow-on issuances of securities admitted to trading; and *an EU growth prospectus regime for SMEs and certain other issuers, with simplified disclosure requirements. Regular issuers of securities will have the option of drawing up a Universal Registration Document (URD) which outlines issuer-level disclosure such as legal, business, financial, accounting and shareholding information as well as providing a description of the issuer for that financial year. The approved URD is intended to speed up the process of preparing a prospectus and to facilitate access to capital markets in a cost-effective way. Issuers that have had debt or equity securities admitted to trading on a regulated market or an SME growth market can enjoy a simplified disclosure regime for secondary issuances. There is no requirement to publish a prospectus for the admission to trading of additional securities of the same class as, and amounting to **20 percent** of the number of, those already admitted to the same regulated market over a 12-month period. This threshold is being expanded from the current threshold set at ten percent.

*Bo Nilsson is a name associated in **Denmark** with an income that sparked national indignation after he made $75m. As ceo of digital payments firm, **Nets**, he received roughly ***1,500*** times what the average Dane earns a year and well over 300 times what the Danish prime minister is paid. Inequality was a key theme in Denmark's general election, in which the Centre-Right government

was removed from power. According to the OECD, income disparities in Denmark have grown 22 percent since 1995, one of the highest increases in the rich world. A recent report from Deloitte and Kraka, a Danish think tank, estimated that the share of total income owned by the richest one percent of Danes has risen from around seven percent in the 1990s to roughly 11 percent today. Deepening social and economic divides pose a threat to capitalism and to democracy itself, Britain's **Institute for Fiscal Studies** recently warned. Nilsson, the Nets executive, defended his case by saying it was the result of a personal investment in the company ahead of its listing that carried risk. But *Borsen* reported that Nets helped finance the programme and removed some of the risk. Other media raised questions around the size of the discount at which the shares were bought. At one shareholder meeting, Denmark's biggest pension fund, ATP, lambasted executives for taking home outsized reward packages. Social democrat Mette Frederiksen, next PM in waiting, railed against extreme bonuses paid to the corporate elite in Denmark. She wants banks to contribute more in taxes to help finance Danish welfare. Henrik Sass Larsen, a fellow Social Democrat and probably Denmark's next finance minister, said he would target executive reward too if he gets into office.

Disguised remuneration French style**: The ***Barrière case is the first decision by the French Civil Supreme Court (Cour de cassation) on April 4 2019 involving the social security charge analysis of a non-qualifying equity-based plan, reported Centre member **Linklaters.** In this case, the hotels and casinos company had set up an equity-warrant based incentive plan for its managers via investment in a private equity investment fund. An investment contract provided that the equity warrants would become exercisable if specific conditions were met (listing of the company or exit of the private equity investment fund). In addition, the equity warrants were not freely transferable, but the beneficiaries of the equity warrant had granted a call option to the investment fund allowing it to purchase their share warrants upon an exit or in case of a withdrawal of the relevant beneficiary. The French social security (Urssaf) took the view that the capital gain realised by the managers upon the disposal of the equity warrant was subject to social security charges and reassessed the employment status of the managers accordingly. The French Civil Supreme Court decided that gains realised by employees through a non-qualified equity-based plan can be re-characterised as *remuneration* subject to social security charges (i) each time that there is a link between the employees' participation in the relevant plan and their employment contracts and, apparently, (ii) regardless as to whether the investment made by the participants in the context of the equity plan is made at arm's length or not. The French Civil Supreme Court indicated in its decision that the valuation of such non-qualifying equity-based plan should be made at the time when the equity-based instruments were freely transferable. This decision brings additional complexity to non-qualifying equity-based incentive plans as it does not follow the approach of the French Administrative Supreme Court (Conseil d'Etat) (in charge of income tax), which tends to focus on the financial risk or the nominal investment of the managers to re-characterise their gain as employment income (instead of capital gain), as the case may be.

*Portugal's government said that a move by executives at **TAP** airline, to pay bonuses totalling €1.171m to 180 employees "constituted a breach of the relationship of trust" between the board and the company's largest shareholder. The Ministry of Infrastructure said that it disagreed with the policy of awarding bonuses, in a year of losses, to a restricted group of workers and without the TAP Administrative Board [on which the state is represented] having been informed in advance of the awarding of bonuses and of the criteria underlying their awards. The ministry said that it was displeased at "the conduct of the Executive Board, which acted in disregard of the duties of institutional collaboration it bears." The Government and representatives of the State on the TAP Administrative Board learned of this decision, which had already been implemented with the processing of salaries for the month of May, through the media. TAP last year had a net loss of €118m, following a profit of €21.1m in 2017.

*__South Africa:__ Hundreds of workers gathered at Kangra coal mine, waiting to be told that they now collectively own a part of the mine. When investment company Menar's chairperson Mpumelelo Mkhabela announced that workers and the community would each get five percent in the Kangra mine, wild celebrations gripped the scene. Kangra made history when it allocated free-carry shares to mineworkers and three local communities, barely three months after Menar started operating the mine, which they bought last year through its subsidiary, Canyon Coal. They took over operations in December. Since Mineral Resources Minister Gwede Mantashe announced the revised mining

charter, mining companies have been up in arms for various reasons. Not Kangra. It didn't wait for the government to implement Mining Charter III before it could give the workers and the community a share of the business. The mine becomes the first to give workers and locals shares as required by the charter. Menar boss Vuslat Bayoglu presented symbolic certificates to a workers' representative, Isaac Mbonani, from the National Union of Mineworkers and to traditional leaders. The shares will be held under separate trusts. "In the next few months, the legal process to give effect to the allocation will be concluded, but we thought we should make our intentions firmly clear right from the start so that you can assess us against our undertaking," announced Bayoglu. He said the ceremony was a practical expression of inclusive growth, one of South Africa's noble socio-economic aspirations. "We are changing the narrative for the mutual benefit of all stakeholders," he said. Mkhabela said the share allocation to employees and the community was different to the usual employee share-ownership schemes, where shares were granted for a limited period. "*This is a permanent arrangement. For as long as you work at Kangra, you will own shares. If the company makes profits and dividends are declared, you will benefit from dividends that will accrue to the employee trust*," he added. Kangra produces about two million tons a year of saleable coal, with the majority of its high volatile coal sold on the export market and the rest to independent users. "We welcome the new beginning of Kangra and we hope the new shareholders will keep their promise," Mbonani said.

***US: Mark Cuban**, the billionaire entrepreneur who founded two companies and is a regular on the TV show *Shark Tank*, said, "We as entrepreneurs have got to make a point to give stock to everybody that works for us. Period. End of story. No exceptions, because that's the only way people are going to get any type of equity appreciation." Speaking during the *Skybridge Alternative* conference, Cuban addressed the issue of increasing inequality of wealth and income, noting that "if someone is only going to be paid by the hour...they're always going to fall behind." The story ran in the **CNBC** programme *Make It*. Uber's first employee, Ryan Graves is worth more than $1bn, thanks to the company stock he got as part of his employment. Cuban says that he gave all his employees stock at the two companies he founded — Microsolutions, a computer consulting service he sold to **Compuserve** in 1990, and Broadcast.com, an online streaming service he sold to Yahoo in 1999 for almost $6 bn in stock. "300 out of 330 [Broadcast.com] employees became millionaires" at the time of its sale, Cuban told CNBC. "Giving employees a stake in the company they work for is feasible for small companies as well as larger companies," Cuban tweeted. "Small businesses are the ones best situated to offer equity. They are more like families."

*Billionaire hedge fund guru Ray Dalio said capitalism is not working for the majority of people and that president Donald Trump should declare the current wealth gap "a national emergency." As of 2018, the world's richest 26 people own the same wealth as the poorest half of the world, according to Oxfam International's annual report on wealth inequality published in January.

California based **National Center for Employee Ownership** reported that employee-owned **Mayville Engineering Company** would remain employee-owned following its IPO. On June 13, the company announced that its board had authorised a buyback of $4m of its common shares, which would "allow it to use the repurchased shares to meet its required 2019 *safe harbour* funding obligation to its Esop. Under the Plan, the Company is required to fund a minimum of three percent of eligible compensation to qualifying participants by way of cash, stock purchases, or any combination.

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