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it's our business

newspad of the Employee Share Ownership Centre

EXCLUSIVE: Roadchef Esop compensation deal

Final pay outs could be delayed until next year

The long, long battle between hundreds of Esop beneficiaries of the motorway services chain Roadchef and HMRC over the tax they will pay on their compensation awards has ended – paving the way for final pay-outs either late this year, or early in 2023.

A letter from Roadchef EBT1 trustee Christopher Winston Smith to the beneficiaries revealed that he had reached agreement with HMRC covering all tax payable by them and by the trust on the High Court awarded compensation.

He said that an application would be lodged with the court as soon as possible for a hearing in order to 'bless' the plans for distribution of the various compensation pots.

However, he admitted that such a hearing could be delayed until early next year and that no pay-outs can be made until the High Court approves the arrangements.

Mr Winston Smith, director of the Roadchef Employee Benefits Trustees, told them that it was "highly likely" that the court would approve the arrangement because the amount of tax was materially less than that sought by HMRC and because the deal brought the dispute with HMRC to an end. The tax, comprising *PAYE, NICs and a relatively small amount of Capital Gains Tax (CGT)* had been paid to HMRC, he said.

This prompted fury among some beneficiaries because it still had not been revealed to them *how much they each will receive, *whether they will be paying Income Tax and NICs at standard rates and by how much their CGT liability is being reduced in this case, *when exactly each will be paid and *whether they will get a final breakdown of the full case costs to be deducted from their compensation.

One Esop beneficiary told *newspad*: "*I and my former Roadchef colleagues are angry that our compensation payments may be delayed yet again, until next year. While I knew we were never going to get away with paying no tax at all, there's been so much secrecy that I fear we'll just end up with a couple of cheques and no explanation about the costs of our case and by how much the compensation is being reduced. We're happy that a deal with HMRC has been reached at last, but the trustee has told us nothing about the actual pay-outs,"* she added.

In 1995, Tim Ingram-Hill, then Roadchef chairman and director of Roadchef EBTL, authorised the transfer of 22m Roadchef Esop share into a separate performance shares trust EBT2, designed solely to benefit senior Roadchef employees, of which he was an intermediary corporate trustee too.

From the chairman

There are many guilty parties in the Roadchef imbroglio and none are as innocent as the original employees and the families who have waited decades for their due reward.

newspad alone has followed every twist and turn. You will read across the page how the sums due have been whittled down, thanks to asinine law, wilful forgetfulness and sinking purchasing power.

I would like to see a compensation fund to supplement what the true deservers receive. I shall write to all who have had a hand in it. Although you won't know who receive these letters, replies or their absence will inform future steps.

Roadchef is not yesterday's news. It stands at the heart of employee share ownership with legal thickets, inventive advisers and impersonal government posing a daily threat to everything we are trying to achieve.

Malcolm Hurlston CBE

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EBT2 granted Mr Ingram Hill options over the transferred shares. When Roadchef was sold in 1998 to Nikko, he exercised his options over the 22m Esop shares at 12.5p per share and sold them to Nikko at £1.31 each, making a gross profit of £26.8m.

Had the Roadchef Esop been allowed to operate as it should, more than 600 Roadchef employees (*at that time*) could have received five figure sums when the business was sold, said their legal adviser, Cardiff based Capital Law.

It was not until 2010, following a change in case funding rules, that Capital Law obtained permission to use third party litigation funding in order to pursue Mr Ingram Hill in the courts on behalf of the Roadchef Esop shareholders.

It was not until January 2014 that Mrs Justice Proudman ruled in the High Court that Mr Ingram-Hill had breached his fiduciary duty when he transferred employees' Esop shares into a separate performance share trust which he had set up. The judge (now retired) ordered appropriate compensation to be paid to Roadchef employee shareholders because they did not receive fair value for their shares when Mr Ingram-Hill sold Roadchef to Nikko.

Roadchef EBT felt obliged to settle with Mr & Mrs Ingram Hill months later because the latter had lodged an appeal against the High Court ruling and so an out-of-court agreement on an undisclosed sum of compensation was agreed.

As a result of the failure of the original trust deed to define strictly who the beneficiaries were, an out-of-court deal was reached eventually whereby the Esop participants would get 61 percent of the compensation; non-participating colleagues nine percent and around 3,000 subsequent Roadchef employees (who had no connection with the Esop and thus no financial losses) the remaining 30 percent. Mr Ingram Hill insisted that he would pay no compensation unless the Esop beneficiaries received the lion's share of the final amount. The terms of his compensation payment remain subject to a confidentiality agreement.

Subsequent deaths and inevitable losses of contact since 1998 have brought the estimated number of surviving Roadchef employee shareholders down to around 500, but the trustee has yet to publish a precise number.

Another Roadchef Esop beneficiary claimed that price inflation had destroyed more than 20 percent of the value of the compensation they should have received, had it been paid immediately after the High Court ruling in 2014. He said that the trust's directors should '*start to open up with transparency'* or resign.

HMRC argued that as the Roadchef Esop was established before tax-advantaged employee share schemes came into being, it was subject to normal tax on any individual gains. In addition, HMRC said that because it had surrendered to the trustee the millions which Ingram Hill paid in tax on his gains from selling Roadchef in 1998, then the beneficiaries should, as a *quid pro quo*, respond by paying due tax on their compensation pots. Mr Winston Smith did not accept any such linkage and retorted that the beneficiaries should pay no tax at all, bearing in mind the circumstances in which their shares had been transferred to another trust and the distress they had suffered subsequently. He dug his heels in.

The first chink of light in the tax dispute came last autumn when the trustee announced that an intermediary was being brought into the impasse in order to settle what Esop Centre chairman Malcolm Hurlston CBE termed: "*The Jarndyce v Jarndyce of our times"* – an interminable Chancery Court case, satirised by *Charles Dickens* in his novel *Bleak House,* in which it was discovered, when the case ended decades later, that not even the lawyers could remember what it was about and that, anyway, the huge legal costs had consumed the value of the contested estate entirely.

In the heady days following the High Court ruling, the trade union which represented the Roadchef employees talked of compensation pots of up to £90,000 per head, but as the case financing and legal charges have been huge, so the expectations of the Esop beneficiaries have been lowered considerably.

Centre urges CSOP reform

In the light of the Chancellor's refusal to ease the rules governing the popular Enterprise Management Incentive (EMI) for SMEs, Centre members are sceptical about Rishi Sunak's easing the rules governing the other discretionary tax-advantaged share option scheme, the Company Share Option Plan (CSOP), even though he has asked for suggestions. In the small print of the Spring Statement, it said that the scope of the government review would be expanded to consider whether the CSOP should be reformed, to support companies as they grew beyond the scope of EMI, said Centre member **RM2 Partnership**, the share schemes and business transition adviser. "*Given the lack of action over*

EMI (where the government's energies would undoubtedly have been best placed), RM2 would not 'bet the house' on a seismic change in CSOPs being decided by the government," it said pointedly.

As for the Treasury's conclusion that EMI was fit for purpose, "*Many people believe this to be questionable – there are a number of things wrong with EMI,"* Graham Muir, share schemes partner at Centre member **CMS,** told trustees at the recent Centre-STEP conference in **Jersey** *(see full report in this issue).* "*As we are no longer members of the EU, there is no need now to link EMI awards exclusively to smallish SMEs*," he said.

The Centre supports CSOP reform enthusiastically, as it allows companies to choose which employees they want to incentivise by awarding share options, with the possibility of imposing performance conditions governing their vesting. But the options can only be issued at *market value* and not at a discount of up to 20 percent as in SAYE-Sharesave. CSOP was originally intended to be an executive incentive, but the options award limit – *unadjusted for price inflation for 27 years* - is now so low that it no longer interests most companies and is being neglected. CSOP should be amended in several ways, to boost its appeal, said RM2 - namely:

*CSOP options may not be granted to an individual over shares with a market value of more than £30,000 (valued at option grant date). "*This limit has not changed in recent times and was now out of kilter with the expectations of senior employees and directors as a key incentivising tool." Newspad* has calculated that the CSOP options award limit would now need to be at least *£55,000* per employee just to keep pace with the 80 percent+ rise in price inflation since 1992, when the CSOP was established. No wonder the number of employees granted CSOP options in 2019-20, *the most recent tax year for which we have share scheme statistics,* fell to just **25,000** compared to an already severely reduced 40,000 employee awards a decade ago. In the 2020 tax year, the cost to taxpayers of Income Tax and NICs relief on CSOP options nationwide was a mere £50m. ***Hence the Centre urges the Chancellor to raise the share options award limit to at least £75,000 per individual.*** By contrast, the individual limit for EMI is currently £250,000 (again valued at grant), but some Centre members believe it would be unrealistic to push for the same value limit to be extended to CSOP because, were that to happen, the tax relief loss to the Treasury would be substantial as hundreds of expanding ex-EMI companies incentivised key new employees with significant CSOP option awards within the raised limits.

*Secondly, the tax advantages of a CSOP were only normally available where the options had been held for *at least three years* – too long, given modern working patterns (*and no such requirement for EMI*).

The Centre believes that the minimum holding period for CSOP options should be reduced to two years. Exercise of CSOP options within three years *as a result of a takeover* could in certain circumstances be income tax free, but the requirements of the CSOP code make this very complicated.

*Thirdly, CSOP qualification requires certain additional hurdles to be cleared if the company whose shares are being placed under option has more than one class of share (*a common occurrence where there are founder, investor and/ or employee shareholders*). These additional requirements were originally intended to stop employers creating an inferior class of employee shares. However, these tests often stop a company from being qualifying for CSOP and it was not felt necessary to introduce the same features under EMI when that was introduced in 2000.

The Centre believes that the CSOP qualifying hurdles should be drastically reduced to encourage wider share ownership in mid-sized companies.

Are these hurdles still truly required as a protection for employees (rather than just as a trap for the unwary client/adviser)? asked RM2. To qualify to grant a tax-advantaged option under a CSOP the shares of the company or, in the case of a group plan, its controlling company must either be a listed company or, if unlisted, must be independent and not controlled by another company (other than the corporate trustee of an employee ownership trust). The shares issued under that option must fulfil certain conditions, such as they must form part of the ordinary share capital of the company and be fully paid up and not redeemable. "*We wait with interest for more details of the proposed CSOP review and hope that the policymakers have more appetite for change than they did with EMI,*" added RM2.

*The Centre is writing to the Chancellor, proposing these changes, in order to transform the CSOP into a complementary partner scheme to EMI, as a first port of call when SME participants expand beyond the latter's limits.

*Mr Sunak announced that he believed the EMI

regime remained effective and appropriately targeted. Reward partner at KPMG Joanne Bryan said: "*It appears unlikely that any changes will be made as to which companies can qualify for EMI, or to the financial limits that apply to EMI options. That said, we hope that HMRC will still be able to review and improve operational aspects of EMI that can currently present administrative challenges for employers. While this outcome is likely to disappoint employers who do not qualify for EMI, or who expect to cease to qualify, the government has announced that the tax-advantaged CSOP regime will be reviewed"* .

EMI and CSOP options gave employees the opportunity to benefit from growth in the value of the underlying shares at more advantageous CGT, rather than income tax, rates. Employers who do not qualify to grant EMI options could potentially grant tax-advantaged share options under a CSOP in place of EMI. However, CSOP options are relatively inflexible compared to EMI options, and are subject to much lower financial limits. Additionally, although there are no restrictions on the trading activities of companies that can grant CSOP options (unlike for EMI options), due to current rules on the *class of shares* that could be used, not all companies that outgrow EMI can implement a CSOP as a replacement. Extending the EMI review to include CSOP was therefore a welcome development. Ms Brien added: "*Although the announcement focused on potential CSOP reforms to support companies as they grow, in our view the review should consider CSOP more broadly - how it could potentially be improved for current CSOP users.* ***Additionally, a more flexible CSOP could encourage wider employee share ownership in larger employers for whom the current CSOP regime is too restrictive commercially***. The Treasury's CSOP review is ongoing, but an update might be issued in the autumn Budget. Employers who expect to 'outgrow' EMI in the foreseeable future *(e.g. due to an increasing headcount*) should decide whether they could wait until the outcome of the CSOP review before considering what replacement to EMI might be appropriate (*any changes to the regime might not be made until April 2023 at the earliest*), or whether an alternative equity incentive might be needed in the meantime, she concluded. *Members who want to put forward proposals to improve the CSOP should email their suggestions asap to *newspad* editor Fred Hackworth - fred_hackworth@zyen.com.

More equity awards to beat rising prices?

Rising costs are forcing more companies to give both key staff and the broad mass of their employees equity awards to encourage them to stay in their jobs. Employers in the UK and EU are turning to share option or deferred share awards as never before because many cannot pay the large pay rises demanded by their employees who are faced with double-digit rises in the price of energy, petrol and many household goods.

The two UK tax-advantaged schemes which lend themselves most to this approach are the CSOP and the Share Incentive Plan (SIP) as companies are not restricted by size from adopting them, whereas the share options based EMI is only open to qualifying SMEs (*some business activities are excluded*) who employ fewer than 250 people and whose gross asset value does not exceed £30m.

Using the SIP, employers can award up to £3,600 worth of free shares to their employees in any tax year, though the recipients must retain the shares for five years in order to obtain full tax relief when selling them.

Employers, in many cases, are in difficulty as they struggle to pay even half the big pay rises demanded by trade unions for the broad mass of employees. Most companies, especially those outside the FTSE100, operate on relatively small profit margins and cannot afford to pay anywhere near eight percent pay rises, but it will require a major effort in communication and consultation with the workforce to get the message through – that there may be no alternative for employees than to accept a mixed reward package, comprising part cash and part equity awards for the year ahead. Falling unemployment - despite the end of furlough, to 3.7 percent in the first three months of the year, the lowest since 1974, while a record 1.3m job vacancies were on offer in April – did not make the situation any easier for employers.

By contrast, the financial services industry looked largely immune to the growing cost-of-living crisis. The Institute for Fiscal Studies (IFS) said the return of bumper finance industry payouts meant the top one percent highest-paid employees were pulling further away from the rest of the UK workforce. Suggesting that City bankers would be better insulated than most from the soaring cost of living, the think-tank said pay and bonus deals in the Square Mile had shot up in recent months and had risen by about twice as much as other sectors in the past two years. The report said that the mean monthly pay packet in

the finance sector in February this year was almost one third (31 percent) higher than in December 2019 in cash terms, compared to a 14 percent across all sectors. Pay growth was driven by high earners, reflected in the higher mean figure. Median pay in the finance industry was significantly higher than for the economy at large. *The IFS said City bankers, fund managers and other finance employees accounted for almost a third of all employees in the top one percent income bracket.* Private sector staff saw the strongest annual growth in pay, while earnings in the public sector fell furthest behind inflation. Average annual total pay growth, including bonuses, especially in construction and financial services, increased reaching seven percent between January and March, roughly keeping pace with rising prices at that time. Basic wages, excluding bonuses, rose by 4.2 percent in the first quarter, lagging well behind the rising cost of living, as measured by the Consumer Prices Index (CPI), whose annual increase hit *nine* percent in April and was expected to top ten percent by the end of this year, according to the Bank of England. The rate of annual rise in the older Retail Prices Index (RPI), which includes housing costs, soared to **11.1 percent** in April, up from a nine percent increase, year on year, in March and at its highest level since January 1982, as energy bills and food prices rocketed, partly due to the effects of the Ukraine crisis. *RPI is an orphaned inflation index, since both ministers and the ONS say they have disowned it, though the civil service still uses RPI to help set staff pension uplifts and one quarter of national debt interest is determined by it.*

Interest rate rises added an estimated £1,300 to annual payments for millions of mortgage borrowers on deals which track bank rate. The month-on-month inflation rise reflects a 54 percent jump - or £693 average rise - in household gas and electricity bills since April, following regulator Ofgem's lifting of energy price cap to just below £2,000 p.a., which will climb by another £800+ plus annually from October. Trade association *UK Finance* said that 1.5m fixed-rate mortgage deals are due to expire this year, with another 1.5m needing renewal next year. Investment platform *Hargreaves Lansdown* calculated that people re-mortgaging at the end of a two-year fixed term deal, following the latest interest rate hike, could see their monthly payment go up by £61, but were base rate to hit 1.5 percent, it could add ***£134*** to their monthly mortgage payments. *Newspad* reported that some share plan advisers are worried that employees with household budgeting problems will be unable to keep up with their monthly savings commitments in SAYE-Sharesave contracts.

*Almost two-thirds of British people think ceos should be prevented from earning more than ten times the average paid to employees, according to polling shared with the *Guardian*. A poll for the High Pay Centre (HPC), a left-leaning think-tank found that 63 percent of Britons said ceos should be paid no more than ten times the earnings of lower- or mid-ranking employees. The survey of 1,104 UK adults found that only three percent of them thought it was appropriate for ceos to get paid more than 50 times the company's average pay. In reality, ceos of the 350 biggest UK-listed companies were paid *53* times more than the median employee, according to separate HPC research published in December 2020. The ceos of 43 FTSE 350 companies received more than 100 times as much as the average employee. Luke Hildyard, director of the HPC, said the research revealed "*the extent to which the lives of those at the top and those of everybody else have become so far removed from each other*". Pascal Soriot, ceo of AstraZeneca, the Anglo-Swedish pharma company that makes the Oxford Covid-19 vaccine, was the highest paid FTSE 100 ceo in 2020, receiving £15.5m. The other top earners were Experian's Brian Cassin, who received £10.3m, CRH's Albert Manifold, with £10m, Laxman Narasimhan of Reckitt Benckiser, with £9.2m, and Berkeley's Rob Perrins, who collected £8m in 2020 (the latest full-year figures available). On an hourly basis, the average FTSE 100 ceo made more money in four days than the average UK employee earned in the entire year. However, while more than half (56 percent) of respondents said policies to ensure wealth was shared more evenly would be the best way to improve living standards for those in the middle and at the bottom, one third (33 percent) disagreed, saying that measures which increased economic growth would be best. Frances O'Grady, outgoing TUC general secretary, said: "*The whole workforce deserves to share in the success of a firm, not just those in the boardroom. Executive pay has raced ahead of that given to other workers – and now it's at stratospheric levels. It's time to set a maximum ratio between the top earner in each firm and other employees. There should be workers on remuneration committees, to ground decisions in the interests of the whole workforce. Incentive schemes should be open to all workers on the same terms, instead of just giving big bonuses to executives.*"

Empowering investor agm voters

Shareholder activism is being brought to retail investors who invest through fund managers by Cambridge spin-out Tumelo, which has raised $19m in capital, led by the US-based fintech investor Treasury, run by the co-founders of Betterment, Acorns and Say Technologies. "*We wanted to focus on the idea that if you own shares in a company, however intermediated you are, you should have some influence over the issues that are important to you*," Tumelo ceo and co-founder Georgia Stewart told the FT supported website *Sifted*. Last summer, the small activist investor Engine No.1 shocked the corporate world by booting three members off the $265bn US oil and gas giant Exxon's board, despite owning just 0.02 percent of the company. Some fintechs, like Tulipshare or Clim8, have focused on engaging retail investors directly, enabling them to join cumulative shareholder votes or pick sustainable investment portfolios. However, Tumelo is focused on closing the circuit between disengaged investors — typically those whose money is invested in pension funds — and the hedge fund managers who vote on their behalf. Since launching in summer 2020, Tumelo has formed partnerships with 75 fund managers and 17 investment platforms in the UK, including Legal & General, Fidelity, Aviva, Cushon, etc. The fintech provides a platform that connects the dots between an individual shareholder's desire to vote for change at a company and the fund managers who are doing the voting. Someone who holds their pension with L&G can log into their pension portal, click on the Tumelo feature or the company's own voting interface and be taken to a page that shows which funds they hold their pension in and which companies their money is invested in. They're able to see what percentage of their pension, and how much, is invested in each company, as well as search for companies within specific industries or geography, such as fossil fuels, or Russia. The Tumelo portal lists which companies have votes open ahead of their agms and lists the questions up for a vote — eg. should Tesla report on how it protects human rights? Individual investors, including employee shareholders, can then vote for or against an issue and Tumelo collects their preferences and sends them to fund managers who hold the real vote. Lastly, an investor can go to a results page where they can see what the overall shareholder vote outcome was at the agm and how their fund manager voted on their behalf. In the UK, fund managers are not obliged to vote according to shareholders' preferences. "*At the moment, it functions more as a recommendation to the fund manager and they can ignore it if they want*," Stewart said. "*Most of the managers we work with look at these data on a weekly basis and then do a quarterly review where they start to understand how well they're aligning with their customers on the different issues like human rights, climate or animal welfare*." Tumelo said that on most occasions, fund managers voted in tune with what the pension holders wanted. In the UK alone, more than £6 trillion sits in pension pots - 42 percent of its total wealth. Tumelo offers the pensions industry a way to engage its indifferent customers. "*There's a huge opportunity to cross-sell other products —when you log into Aviva's platform, there's health insurance, car insurance and pension management*," said Ms Stewart.

It's the US that the company believes will drive its real growth. "*There's higher financial literacy in the US, people are really interested in investments, they understand proxy voting much better — whereas in the UK, we're kind of clueless*," Stewart added. Stateside, Tumelo will broaden its remit from pensions and will mainly focus on retail trading platforms and broker platforms owing to their much broader use. Tumelo seeks policy change to align investment managers with shareholders. Making that happen would involve the world's biggest fund manager, BlackRock, which may not be distant after Larry Fink indicated that the asset manager intends to give voting rights to the people invested in its funds. "*They don't have a way to do that yet, but where BlackRock goes, other people follow,*" she said.

Free shares in UK pub group plan

Brewdog ceo and part-owner James Watt plans to give away almost a fifth of his equity stake to the firm's staff. He owns a quarter of the fast-growing Aberdeenshire-based beer maker. BrewDog will award shares worth around £120,000 to 750 staff over four years and launch his first profit sharing scheme for all bar workers as it hoped to surmount a rift with disgruntled former employees. Founder and ceo, Watt said that he would hand over almost a fifth of his stake in the craft beer firm, representing 3.7m shares, equivalent to a five percent shareholding in BrewDog, to salaried employees, via an EBT, to mark the group's 15-year anniversary. The near-£100m share award will be worth around £30,000 a year over four years to each eligible employee, based on recent fundraising, which valued

BrewDog at £1.8bn. Brewery and pub employees had criticised him over his behaviour and alleged pressure on them to grow the firm rapidly. At least partly in response, Mr Watt set out an incentive plan which would channel half its pub profits to those working on hourly rates in its 111 bars worldwide. That could mean an annual bonus of between £3,000 and £5,000 each, in cash payouts made twice a year. He claimed the shares giveaway could be worth £120,000 for each Brewdog salaried staffer, comprising four annual tranches starting this June. However, the shares are not yet tradable and plans to float shares on the stock exchange have been delayed. The EBT will distribute the award equally among salaried staff, at around 1.25 percent of the company equity each year. Employees who leave ahead of shares being floated on the stock exchange will have to give up their options to buy shares, which will then revert to the trust. At current rates of turnover, the five percent stake will take up to eight years for the trust to distribute. The rewards package, unusually, extends to former members of staff who will get discounts on Brewdog products and in its bars and will be able to join an alumni club. Mr Watt said Brewdog wanted to be a "new type of business", and that *shared ownership would help with recruitment, retention and team engagement.* "*We want our team members to act as business owners and incentivise them as if they are business owners*," he added. The group was unlikely to float in the next 12 months given market uncertainty, he admitted, but said a listing was very much part of the plan in the medium term. Brewdog was founded by Mr Watt and his fellow beer-lover Martin Dickie, as a challenger to conventional beer. It expanded rapidly by opening a new brewery in Ellon. Other Brewdog breweries are in Ohio, Brisbane and Berlin.

EVENTS

Save the date for Centre webinar

Share schemes and the impact of inflation - **Thursday June 23 15:00.** Share schemes expert **David Craddock** will outline his research into how inflation will impact share plans in a 45-minute webinar. There will be plenty of opportunity to put your questions to him and we look forward to seeing you there. Registration is now open.

Report: Centre-STEP Jersey event

The Centre's latest Share Plans and Trustees conference, held in partnership with the Society of Trust & Estate Practitioners (STEP) Jersey, took place on May 13 in St Helier.

Centre founder **Malcolm Hurlston CBE** explained how he had brought the Esop to the UK from the US and was helped to set it up in *Blighty* by lawyer David Reid with backing from ex Mourant Jersey based partner James Crill. The key concept had been to combine an EBT with a profit-sharing trust, said Mr Hurlston and both Jersey and Guernsey had immense experience of trusts, making it easier to reach the right answers. It was the question of being trustworthy which defined both Channel Islands. Cayman among the Overseas territories was aiming at trustworthiness too. The jury was out on the BVI, he added.

Jersey Information Commissioner Paul Vane delivered the keynote speech, which covered emerging info privacy threats and opportunities, as well as data protection in Jersey and further afield and key updates on data protection in the workplace. "*Remarkably, very few people are prepared to take any steps to protect their privacy,"* Mr Vane told his audience at the *Pomme d'Or* hotel. When tackled on personal information privacy, people would shrug their shoulders and say: "*Well it doesn't really affect me -I've got nothing to hide"* but they do– for example, would delegates want their medical records shared with others, asked Mr Vane? Data flows are essential to global commerce and trade and Linklaters had reported that 60 percent of world trade was in the process of being digitalised. The value of data is increasing exponentially, but we are all responsible as individuals for protecting our personal privacy information, so we should think more, for example, about how much info we had to give a commercial service supplier to qualify for receiving that service, he added. (*Read Mr Vane's speech in full in the Pamphleteers Blog).*

Tax barrister and Esop doyen **David Pett** of Temple Tax Chambers guided his audience through employee trusts with a look-back at their uses and abuses. His talk included an examination of the Employee Ownership Trust (EOT), which was established by the UK Coalition Government in 2014. EOTs and their trustees can be Jersey or UK based by choice. They are popular in the SME sector because owner/founders could gain CGT exemption by selling more than 50 percent of the equity in their companies to their employees. There are restrictions on the use of EOTs in order to try and prevent it from being used as a tax-avoidance scheme, he said. The tax planning issue brought him to re-examine the *Loan Charge* and *Disguised Remuneration.* Most of the schemes have been promoted as ways of obtaining substantial tax relief on the employment of key senior managers. Typically, in remuneration trusts, corporate entities would make 'contributions' to offshore trusts, but in reality the contributions *or loans* were never going to repaid, said Mr Pett: "*The then government in 2011-2 estimated that the loss to the Revenue of due tax was £1.5bn, but I think they seriously under-estimated the loss of revenue,"* he said. Ministers had been slow to react, but eventually, they clamped down on their use and charged tax via the loan charge on such employment arrangements retrospectively back to 2010. People erroneously think that payment of the loan charge means the end of the case and HMRC said recently that it would not pursue cases where the earnings of those managers in the scheme were below £75K annually. He was surprised that the Bar Council has not questioned a few QCs who, apparently, have advised clients that they stood a fair chance of getting HMRC tax demands on disguised employment over-ruled by the courts, because HMRC has made it very clear that the loan schemes did not work from a tax perspective. Settlement opportunities with HMRC over remuneration trusts are still open and it is advisable (and cheaper) to settle, he added. However if the "loans are still outstanding, then HMRC could come after you. After all, trustees are not going to write off the loans – why should they?", demanded David.

Tax adviser **Paul Malin** of PMC said that HMRC now offered poor quality service, largely owing to its massive reduction in manpower. He discussed investigations, the hit and miss nature of disclosures and why overall tax debts are at an all time high when the Exchequer should be benefiting from tax avoidance penalties. This was why his presentation was entitled "*HMRC has had a lot of catching up to do while unravelling the post Covid mess.*" Whereas once there had been hundreds of local UK tax offices, this network has now been reduced to just 19 tax centres, albeit bristling with new technology, he said. The Covid pandemic stopped a lot of tax investigations in their tracks but now they are restarting.

Graham Muir of CMS, who co-chairs the tax committee of the Share Plan Lawyers Group, sits on the share scheme experts group of the Quoted Companies Alliance and is a founder member of the HMRC share schemes forum, updated delegates on most recent developments in tax-advantaged employee share schemes. He was "disappointed, to say the least," that the Chancellor had refused to reform EMI. "*The Treasury view that no action was required is **not** the view of most share scheme practitioners*," Graham told delegates. EMI's £30m gross asset value limit on participating companies has remained unchanged in 27 years and needed an uplift, said Graham. The 249 limit on the number of employees to qualify for EMI just seems too few and should be doubled to 500, so that a lot of companies could be brought back within the ambit of EMI. There are too many disqualifying occupations which prevent, for example, financial sector companies from participating in EMI, so the veto list should be significantly reduced. In addition, the *working time* requirements for EMI are, in this age of the *gig economy,* incongruous. Another problem is companies and advisers requesting HMRC permission for early exercise of EMI options – which results in delays or even HMRC refusal to grant permission. Buried in the Spring Statement was news of a Treasury review of CSOP in order to see whether it could become a "*helping hand*" to those fast-growing SMEs who were falling foul of EMI rules. There had been a "sigh of relief" that Mr Sunak had not raised CGT rates applying to employee shares. "Sanity has prevailed," said Mr Muir. Meanwhile, CSOP was *withering on the vine* because most companies were not interested in taking up its limited incentives.

Helen Hatton, now the chairman of financial investigations and surveillance company, **Central Associates**, is widely seen as prime architect of the today's Jersey regulatory regime. She gave an

overview of the current economic climate and international regulation. Helen used as a reference point her wide experience as a non-executive director. Central Associates has witnessed waves of cyber crime, crypto fraud, procurement fraud, sanctions busting, litigation being used as a tool to generate huge debt judgements, aggressive hostile divorces and active organised crime groups. The takeaway was that standards of ethics have dropped so businesses, families and individuals need to be far more vigilant in managing risk of exposure.

She then discussed the outstanding commercial debt judgement statistics as measured by Registry Trust, founded by Mr Hurlston, which gave an impressive barometer of the state of the economy. Although these stats had fallen during the pandemic, Helen believed they could "explode" later this year. Jersey Post Group, which held worldwide contracts for letters and parcels deliveries, has seen increased costs, driver shortages and zero hours contacts, as de-regulation was exploited. The UK population is in for a tough time as households reduce discretionary spending as prices rise across the board, she warned. Debt and insolvencies are increasing, national institutions are failing, criminal behaviour goes unpunished and corruption is rising. More regulation and law will be on the way inevitably, to deal with these disturbing trends, she added.

Professor **Michael Mainelli**, executive chairman of Z/Yen Group, shared his research which shows why employee share ownership matters. The world is changing fast – employers are finding half or more of their employees are working from home or even holiday resorts, rather than in conventional offices. We need a re-statement on the importance of Eso and the Centre is at work finalising the document, the draft of which was available to delegates on the Centre's website. World Development Goal number ten almost perfectly suits the Centre's objectives. Employee-owned companies work better in terms of productivity, loyalty and morale than companies without Eso and the concept is humanitarian, bringing social benefits like inclusion and equality so Eso should be a social norm, he said. Company owners who do not have Esops should be held to account. Employees need to drive the concept too. Why would a company want to introduce an Esop? We need to reach out to the wider employment world to stress the many advantages of employee share schemes including creativity and reduced

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absenteeism. How could policy makers encourage more employee share ownership? In terms of education, what type of legislation is necessary, start are the tax implications? He added: "*I am guided by the saying 'let's be optimistic; pessimism is for better times'*".

MOVERS & SHAKERS

New member: The Centre welcomes into membership **Fiduchi**, an independent, owner-managed financial services business specialising in the provision of trustee and administration services to assist clients with their incentive arrangements. Its HQ is in Jersey and it has a UK presence too. As a core-service line of Fiduchi, the ***Employee Incentives Team*** works collaboratively with its clients and their advisers, to support the implementation and on-going trusteeship and administration of a diverse range of employee incentive plans. Whether Fiduchi is working with a large, listed company or a small private company, its approach remains the same – a high-quality, relationship focused, collaborative approach with sensible pricing. Fiduchi takes a tailored approach in the provision of trustee and administration services to facilitate the provision of most employee share incentive requirements including: LTIPs, deferred and matching plans, management incentive plans, growth share plans, employee ownership trusts (EOTs) share incentive plans (SIPs) and hedging, internal market and nominee arrangements. In addition to employee incentives, Fiduchi specialises in private clients, corporate services, fund and marine & aviation services. Contact: **Tom Hicks** executive director tom.hicks@fiduchi.com Tel: 07829 931001

Obituary: Centre member **MM&K,** the executive remuneration consultancy, announced the death of friend and colleague, **Damien Knight**, after a long illness. A private funeral mass took place on May 18. "*Damien was a dedicated professional, with total mastery over his subject. He was a pleasure to work with, always supportive, often amusing and a true gentleman,*" said MM&K's directors. For many years, Damien supported the *Trussell Trust*, an NGO and charity that works to end the need for UK food banks. If you would like to make a donation in Damien's memory, you can do so at Make a donation - The Trussell Trust.

WHITE & CASE

On the move

***Edward Daly** was appointed senior manager - employer solutions at **JTC Group (Jersey)** His co-ordinates: email: Edward.Daly@jtcgroup.com, Phones: Direct: +44 1534 868 725, Office: +44 1534 700 000. Edward was formerly the Centre's main contact at LGL Group.

*****Employee Ownership Trusts***, published by *Claritax Books*, at £85 per copy has done well and there has been a second print run, its author, **David Pett**, tax barrister, of **Temple Tax Chambers** told *newspad*. He said: "*Accountants need to understand the different aspects of establishing a suitable trust, including satisfying the tax requirements to obtain CGT exemption and putting in place suitable corporate governance arrangements to ensure vendors are paid in full and that the business continues to prosper as an EOT-owned company.*" The book is available electronically via an i-Croner package subscription (although not as a single e-publication). "*There is still a healthy level of interest amongst company proprietors looking for an alternative to a trade sale, and, apparently, this is the only published work which deals with* ***all*** *aspects of EOTs and the tax relief associated with them.*"

*Independent Jersey trust company **VG** unveiled its new brand identity, signalling a key milestone, as it approached its 40th anniversary this year. Ian Murphy, Debbie Lumsden, Paul Roper and Steve Langan were appointed directors of VG Holdings.

ESG CORNER

***Gender bias in share awards.** Men are much more likely to be offered the chance to own shares in their companies than women, a new survey suggests, reported *Sky News*. An analysis by law firm *Boodle Hatfield* (BH) showed that on 33,400 occasions when tax-advantaged share options were offered, 69 percent were to men and 31 percent to women. A study of 14,260 different tax -advantaged share options that were taken up,

showed that women accounted for 30 percent and men 70 percent. BH said the figures showed the difference in remuneration between men and women at senior levels is likely to be "even starker" than the ten percent gender pay gap reported for all jobs in the UK. BH said: "*The gulf in share options granted to men and women shows there is clearly considerable work to be done in narrowing the gender remuneration gap. Share option schemes can be a powerful retention tool, especially for managers in high growth sectors. These figures are likely to reflect the under-representation of women in such roles*." Check Warner, co-founder of venture capital firm Ada Ventures, said: "*The gender gap in share options eclipses the gap in basic pay between men and women. Women are missing crucial opportunities to build wealth and to build stakes in the businesses they work for.*"

*Mid-sized UK listed companies are prioritising gender equality, ethnic diversity and social inclusion in their ESG policies, rather than environmental concerns, according to a report by accountancy firm *BDO*. While two-thirds of the 500 public companies surveyed were prioritising socio-economic and work-related ESG issues, only 23 percent were majoring on environmental issues, the report said. Many directors of mid-sized service industry companies still think that environmental issues, such as zero emissions targets, have little or nothing to do with them. Investment inflows into ESG have dipped in the UK, largely due to the Ukraine crisis.

*A new statement is needed in the annual report of all premium and standard listed companies about whether specific diversity targets have been met, Centre member **CORPGRO** reminded clients. In addition, there are requirements for expanded disclosures on diversity in board committees, the policy for the board and committees on diversity and to flag wider diversity criteria. This followed the publication of new listing rules disclosures on diversity and inclusion, announced by the Financial Conduct Authority. The annual report disclosure statement will apply, as at a chosen reference date, against these specified targets: *40 percent or more of the board should be women *One or more of the chair, senior independent director, ceo or cfo is a woman *One or more of the board must be from a non-white ethnic background. In addition, the required disclosure in annual financial statements must show the gender and ethnicity of the board and of executive management. Women include those defined by sex and self-identifying women. The '*comply or explain'* rule applies. Another new disclosure is to explain in the company's corporate governance statement the diversity policy applying to the board or explain why, if no such policy applies. Data collection process is another disclosure issue and consistency of approach between individuals, targets and numerical results was expected, added CORPGRO.

TRAVERS SMITH

***Aviva** chairman George Culmer said he was shocked and flabbergasted by investors' "inappropriate" comments at its agm. They were aimed at ceo Amanda Blanc. Abusive remarks from the floor included a claim that Ms Blanc was "*not the man for the job*," that she should be "*wearing trousers*" and that Aviva's female board members were "*good at basic housekeeping activities."* Ms Blanc, who joined Aviva in 2020, said later that sexism had got worse and more overt the more senior she had become. She feared that real equality was a distant prize. Aviva's share price has risen by more than 40 percent since she took the top job. Dame Inga Beale, the former ceo of Lloyds of London, said that the culprits should be "embarrassed" over their behaviour. The abuse was a classic example of why sexism in the market place still needed to be tackled, she added.

***BlackRock,** the world's largest investment fund, signalled a turn in the tide by warning that it would vote against most climate change resolutions at agms this year because it considered them to be *too extreme*. BlackRock said that it was worried that resolutions to stop financing fossil fuel companies, forcing them to decommission assets and setting absolute targets for reducing emissions in their supply chains were not in the long-term financial interest of its clients.

***Goldman Sachs** announced that it was allowing its senior bankers to take as many holidays as they want, as criticism mounted over excessive hours worked by junior investment banking staff generally and as competition intensified to attract and retain the best talent in the banking sector. In a riposte to the *Karoshi* (death by over-work)

phenomenon in Japan, all Goldman's 45,000 staff worldwide are being told that they must take a minimum of 15 days leave annually, starting next January.

***HSBC** suspended a senior executive ahead of an internal investigation into a presentation he made that accused central bankers of overstating the financial risks of climate change. Stuart Kirk, the global head of responsible investing at HSBC's asset management division, attacked climate "*nut jobs*" during the speech. The UK's biggest bank faced calls to sack Mr Kirk after he hit out at climate activists and asked "*Who cares if Miami is six metres underwater in 100 years*?" The bank was forced to distance itself from the comments after he played down climate risks. Mr Kirk told a conference: "*there's always some nut job telling me about the end of the world.*" However, other senior bankers and a leading investment fund criticised HSBC for suspending him, arguing that free speech was at stake, reported the FT

*Climate change activists are disrupting the agms of major UK companies, forcing some to abandon live meetings in favour of virtual agms. **Lloyd's of London** moved its agm to a virtual format after being advised that climate change protestors were planning to disrupt the planned in-the-flesh event. The hallowed insurance market told members not to attend the original event as the risk to staff safety was deemed too high. A group of Extinction Rebellion activists had already forced the temporary closure of the City HQ by gluing themselves to its doors. Lloyd's has pledged to phase out existing investments in companies which obtain 30 percent or more of their revenue from coal mines, tar sands pipelines and new oil & gas exploration by the end of 2025. Shareholders dented Barclays' climate credentials at its agm, when almost 20 percent of those who voted rejected the bank's climate strategy as activists protested against the bank's financing of fossil fuels. Barclays set out plans and progress towards goals to reach net zero emissions by 2050. The agm was a horror show, where climate activist groups, including *Extinction Rebellion* and its offshoot, *Money Rebellion,* set off alarms and glued themselves to chairs in the Manchester Convention complex. Barclays chair Nigel Higgins instructed security guards to remove protesters after he was interrupted multiple times and forced to delay the start of the agm for almost an hour. "*Barclays Bank is morally bankrupt,"* one activist shouted. "*Barclays has ploughed $160bn [£128bn] into fossil fuel extraction*," another declared. Shareholders disrupted the agm held by **Standard Chartered** in London too, amid concerns over the banking group's climate track record.

COMPANIES

*The former executive chairman of roadside auto services company **AA,** Bob Mackenzie, took his case for wrongful dismissal - *after hitting a colleague in a hotel bar during a strategy away day* - to the Court of Appeal, seeking the reinstatement of share bonuses which he claims could have totalled ***£225m*** over five years, had he been still in post. The AA won the first round in the High Court last year when it argued that Mr Mackenzie, who pleaded ill-health and excessive business pressures for his behavioural lapse, could not prove that he would have hit bonus targets had he remained in post and that, anyway, the company's share price had fallen by more than 33 percent during his last two years of tenure. Mr Justice Metzer ruled that Mackenzie could only claim damages for loss of basic salary and holiday pay, reported *The Telegraph.* The judge added: *"I do not consider that any leader of a significant listed company could single-handedly be responsible for the sort of dramatic turnaround necessary to trigger the share payments."*

*The **Boots** £7bn pension fund seemed a key factor in the battle over the proposed sale of the huge pharmacy chain, which is currently owned by US retailer **Walgreens.** Founded by John Boot in 1859, it is the UK's largest pharmacy and beauty retailer, which sells products worldwide and which, in the year ending August 2021, had more than 315,000 staff, with sales of £105bn. **Asda** owners, the Issa brothers, supported by private equity firm **TDR Capital**, reportedly got cold feet about bidding formally, implying that the £7bn price tag was way too high. The other suitor was Indian billionaire Mukesh Ambani's **Reliance Industries,** backed by US private equity titan **Apollo Global Management.**

***BP** was nailed by the *windfall tax* after recording a doubling of its pre-tax profits from soaring gas and oil prices. The energy giant reported an underlying profit of $6.2bn(£4.9bn) compared to $2.6bn in the same period last year. BP said the increase was due in part to "exceptional oil and gas trading". Rival **Shell,** which will be liable too to the 25 percent windfall tax on oil & gas producer profits, reported its highest ever quarterly profits as oil and gas prices surge around the world. It made $9.13bn (£7.3bn) in the first quarter of this year, almost triple its $3.2bn profit it announced for the same period last year. However, Shell said that pulling out of Russian oil and gas had cost it $3.9bn (£3.1bn). It paid out £4.3bn to shareholders in the last quarter and said it planned to dish out roughly the same for the current quarter. Before the windfall tax was announced, Shell had promised to invest £20bn to £25bn in the UK in the next decade in low carbon energy and in UK gas and oil supplies.

*The UK government launched a *full national security assessment* of the French telecoms billionaire Patrick Drahi's 18 percent stake in **BT**. Business secretary, Kwasi Kwarteng, said he was exercising his "call-in power" under the National Security and Investment Act 2021 after Drahi's **Altice** company increased its stake in BT from 12.1 percent to 18 percent last December making him the single biggest shareholder. The call-in powers granted through the new Act allow ministers to block transactions linked to important national assets and even unwind them retrospectively, if they are deemed to harm national security. Mr Kwarteng acted just before the expiry of the six month ban on Drahi acquiring more BT shares.

*More than one third (1.36bn votes = 38.24 percent) of voting shareholders rebelled at the agm against Pharma giant **GSK's** three-year looking-ahead executive remuneration *policy*, but ceo Dame Emma Walmsley will still be eligible to earn bonuses of up to 600 percent of her £1.2m base salary. She was reappointed to the board by 99.79 percent of voting shareholders. However, opposition to GSK's remuneration *report* was muted – only nine percent voting against it. Cfo Ian Mackay will be entitled to bonuses of up to 400 percent of his base £850,000 salary.

*Peter Cowgill resigned as ceo and chairman of **JD Sports** months after the retailer was fined more than £4m for breaching the competition regulator's rules with clandestine meetings with a takeover target. Mr Cowgill, 69, who has sold more than £50m of shares in the company in the past two years, is leaving after he attempted to block attempts by the board to split the roles of chair and ceo, which Cowgill has jointly held since 2014. The company suffered a shareholder rebellion last year after it emerged that Mr Cowgill was paid almost £6m in bonuses despite the company accepting more than £100m in government support. The company did not say whether he would receive a payoff. He will be replaced temporarily as ceo by Kath Smith, its senior independent director who spent 25 years as md of the Adidas and Reebok brands.

*The board of **Just Eat** said it would not be putting Jörg Gerbig, its coo, forward for re-election at the company's agm, as it was due to engage an external expert to conduct an investigation into "possible personal misconduct". The group's chair, Adriaan Nühn, announced plans to stand down too shortly before the agm, as the delivery firm faced anger from shareholders over a botched takeover deal and heavy losses. Just Eat said an investigation into a complaint against Mr Gerbig, which it said was "not related to financial or reporting obligations", was at an initial stage and no conclusions had been drawn. Just Eat was recently criticised for holding a lavish ski trip for more than 5,000 staff, dubbed *Snow Fest*, in Arosa, Switzerland, at a reported cost of €15m (£12.6m). Just Eat faced a shareholder revolt after revealing declining orders and plans to sell off all or part of its US-based Grubhub arm, which it bought for $7.3bn in a deal agreed less than two years ago and completed last year. The company recently revealed a pre-tax loss of more than €1.1bn (£916m) for 2021 although it said it was "rapidly progressing towards profitability". Just Eat's second-largest shareholder, the US fund Cat Rock, called for a shake-up of the board, saying there had been a complete loss of trust by investors as the value of their shares has dived by about 75 percent in two years.

*The annual report of **Manchester Airports Group,** which owns London Stansted and East Midlands airports, showed pay for the group's managers rose by £2.8m to £12.2m in the year ending March 31 2021 – the first 12 months of Covid when air travel slumped. This represents an increase of 23 percent compared with a year earlier. Meanwhile, the highest-paid director at MAG – understood to be its ceo, Charlie Cornish – was awarded an extra £500,000, a rise of 25 percent taking his total remuneration to £2.5m. Aviation was one of the sectors hardest hit by

Covid, and MAG said passenger numbers across its three airports fell by as much as 90 percent between April and August 2020. Since the lifting of almost all Covid travel restrictions this year passenger numbers have begun to rebound and the Easter break was marred by huge queues and waits of up to eight hours as airports and airlines across the UK struggled to cope with staff shortages caused by Covid infections and layoffs. Manchester seemed less prepared than rival airports for the reopening of travel, having suffered problems, which continued into May. MAG embarked on a cost-cutting programme of mass redundancies and held discussions with unions over its plans to cut 900 jobs. It asked all its employees to accept a year-long ten percent pay cut, while the company halted all investment and non-essential spending. But the annual report showed directors received more pay and bonuses than they had a year earlier. A spokesperson for MAG said all its directors took a ten percent reduction in salary as part of business measures enacted during Covid restrictions, which was agreed with trade unions. "*The annual report reflects bonuses paid to all colleagues, based on the performance of the business in the financial year ending March 2020. MAG performed strongly in the year leading up to the pandemic.*" The annual report numbers included bonuses granted under long-term incentive schemes and termination payments to directors who had left and the company had been required to report the salaries of a larger number of executives than previously.

*The US private equity firm which now owns supermarket chain **Morrisons** offered to sell 87 petrol station forecourts in an effort to gain the competition watchdog's approval for its debt-laden £7bn takeover of the UK's fourth largest supermarket. The *Competition and Markets Authority (CMA*) said it was "minded to accept" the plan by **Clayton, Dubilier & Rice**, but it would consult before making a final ruling. Although the planned takeover has yet formally to go through, CD & R de-listed Morrisons' shares months ago, thus ending decades of all-employee share ownership for around 31,000 employee participants. A preliminary CMA inquiry found the agreed takeover could lead to a loss of competition and potentially higher petrol prices for drivers in 121 areas. CD&R owns the Motor Fuel Group, the largest independent operator of petrol stations in the UK with 921 sites, while Morrisons operates 339 across Britain. Morrisons rescued **McColl's**, the convenience store and newsagent chain, which was about to collapse into administration. A last minute Morrisons £182m winning bid appeared to have saved the majority of its 16,000 jobs in 1,160 shops and stores. Morrisons said it would pay off McColl's debts and would protect its pension schemes. Preferred creditors. including HMRC, will be paid off.

***NatWest** executives avoided a shareholder rebellion despite a controversial new pay policy that could net its ceo, Alison Rose, up to £5.2m a year, reported *The Guardian.* The bank's new pay policy, which was backed by shareholders, will increase Rose's potential bonus payouts by 25 percent, and result in a 43 percent rise for finance chief, Katie Murray, by 2023. Ms Rose was paid almost £3.6m in 2021. However, 93 percent of shareholder votes supported the policy, so executives avoided an embarrassing rebellion on the first executive pay overhaul since the bank returned to majority private control last month, when the Treasury sold taxpayers' shares at a loss to reduce the state's equity stake to 48.1 percent. NatWest – formerly Royal Bank of Scotland Group – was nationalised through a £46bn bailout at the height of the financial crisis in 2008. Shareholder advisory firm Glass Lewis had advised investors to vote against the pay plan because it had concerns over the increase in potential executive pay, as well as the decision to replace long-term incentive plan (LTIP) with a scheme with fewer performance metrics that could make it easier to secure payouts. "*We are concerned by the increase in overall incentive opportunity and the introduction of an RSP [restricted share plan] absent of a compelling strategic rationale for this type of award structure*," Glass Lewis said in its report. "*The RSP will allow Rose to earn as much as 150 percent of her £1.1m salary, while the new bonus plan will give the banking boss a chance to again double her base pay. Together, the changes will allow Rose to earn 25 percent more in bonuses than under the current policy, and raise her potential pay prospects by 19 percent. It means she could earn as much as £5.2m by the time the policy is fully implemented in 2023.*" NatWest defended the proposals, saying that while the bank was aware the policy could court controversy, the changes would bring executive pay closer to levels offered by rival UK banks.

*The fashion retailer **Next** brushed aside an agm backlash over executive bonuses after its ceo received his highest reward since 2015 while benefiting from government support. Simon Wolfson, took home almost £4.4m last year, up 50 percent on the year before, after being awarded

an annual bonus worth 100 percent of his basic salary and two share bonuses based on long-term performance. The Institutional Voting Information Service (IVIS), which is part of the Investment Association, marked Next's annual remuneration report with a "*red top*" warning, suggesting that shareholders vote against. It raised concerns about the bonuses at a time when Next benefited from government support including furlough pay for workers and business rates relief. "*There is no clear indication whether the company has or intends to repay the support received from the government*," IVIS said of Next. It paid back £29m of business rates relief last summer, intended to cover the period when its shops were open. The group's remuneration committee said that executive pay was "proportionate and aligned to business performance." Only 7.5 percent of voting shareholders followed the advice of the proxy advisers and so the remuneration report sailed home without difficulty.

*The bakery chain **Greggs** faced a potential shareholder revolt over high pay for its executives despite not paying back £87m in government furlough support received in 2020. It did pay back £4.9m in furlough support received last year.

*Almost 30 percent of voting shareholders at online grocery specialist **Ocado**'s agm rebelled against a plan to pay the ceo, Tim Steiner, up to *£100m* over the next five years. This significant minority rejected the company's overall remuneration *policy.* A similar proportion voted against a three-year extension of Ocado's *value creation plan,* which permits Steiner to earn up to £20m a year and other executives up to £5m each. However, Ocado said later that it was going ahead with the reward plan anyway, despite the size of the shareholder rebellion. The extension of the scheme to 2027 came after the company missed a share price target that would have triggered a £20m bonus for Steiner in March. Ocado's share price has fallen by more than two-thirds to about 890p from a peak in January 2021, as the surge in online grocery shopping during the pandemic rapidly unwound. The executive reward scheme, which is linked to the performance of the share price, was meant to run for five years until 2024. A significant proportion of the group's shareholders tried to block the deal in 2020, even though it replaced an earlier generous executive reward plan that was equally controversial. Ocado's latest reward proposals had been criticised by the investor advisers Glass Lewis and Institutional Shareholder Services and had generated complaints from shareholder Royal London Asset Management, which said it had serious concerns about the value creation plan, adding that it was an "*example of how poorly designed incentive plans"* could *"lead to excessive awards for management."* Ocado said that its remuneration committee chair had undertaken an extensive programme of engagement with its largest shareholders and representative bodies in developing pay policy for the next three years. "*Many of our largest shareholders understood the strategic rationale for continuing to operate a non-standard, leveraged long-term incentive plan at Ocado and indicated their support for our proposals to extend the scheme beyond its original five-year term,"* the company said.

*Sir Martin Sorrell, founder of advertising company **S4 Capital**, cancelled more than £600,000 worth of executive bonuses for directors, including himself, after it missed an EBITDA earnings margin target and twice delayed the release of its annual results.

***Tesco** was criticised after paying its ceo £4.75m last year, including the highest annual bonus awarded since 2016, as families struggled with rising food costs. Ken Murphy's package included a £3.21m bonus, while fd Imran Nawaz, earned a £1.24m bonus – taking his total to £5.4m for the year, including a £3.5m *golden hello* to cover bonuses he missed when leaving his former employer, Tate & Lyle. Tesco's pre-tax profits more than doubled after pandemic restrictions eased. Murphy, who joined the UK's biggest supermarket chain in October 2020, could earn up to £10.7m this year if he meets performance targets. Andrew Speke at the High Pay Centre said "*Tesco should be spending this money on raising the pay of its workers to protect their living standards from rising inflation and keeping its food prices as low as possible, to ensure its loyal customers can still afford to shop there as food prices rocket across the board."* Tesco chairman, John Allan, said that the *UK was facing "real food poverty for the first time in a generation*". He said some customers were asking staff to stop putting their groceries through the till once they had reached a certain total, leaving some items behind, as they rationed food spending. Steve Golsby, head of Tesco's remuneration committee, said he was satisfied that the bonus payouts were "*appropriate and reflect performance over the respective performance periods.* Our directors have successfully navigated this period of uncertainty

as demonstrated in their performance this year," he added. Murphy's and Nawaz's pay is dwarfed by the total of £10.5m paid to Tesco's former fd Alan Stewart in the past year, including £8.58m from cashing in maturing share awards for historic performance by the business, on his exit - on top of £1.95m in pay. Former ceo Dave Lewis continues to benefit from his time at Tesco, with £1.89m from a deferred bonus and share award paid out last summer. This year, Murphy could receive a bonus even if Tesco does not reach its profit ambitions after a change in the company's reward rules, but full payout will be subject to cutting food waste, increasing diversity and reducing the retailer's carbon footprint. Tesco has said it would pay out £50m in *thank-you* bonuses to employees in stores, warehouses and customer contact centres and it promised to invest £200m in increasing its rate of pay for shop-floor staff by 5.8 percent to a minimum of £10.10 from July 24. However, it has been criticised for taking away the right to additional sick pay for those with Covid.

UK CORNER

EOTs

Hemel Hempstead-based recruitment firm **Protech** transitioned to employee ownership, transferring 100 percent of its shares to an EOT for its 14 employees. Protech md Antony Cox, who bought the business in 2003 as part of a merger, owned 60 percent of the equity and director Roman Motyczak owned the remaining 40 percent. There is a four-year plan to pay back the loan, while an EOT board is being set up comprising Motyczak, an employee-elected trustee, and an independent trustee.

*__Ustwo__, a London-based digital design studio, recently transitioned to an employee-ownership model. The founders reduced their equity in the business and transferred the majority of the company's ownership to employees. This means that all who work at Ustwo, now and in the future, are owners of 62 percent of the company's shares.

Public sector pay troughing

*Two think-tanks attacked the NHS for allowing the pay of its senior managers to increase by 65 percent over the past decade, more than three times the 18 percent pay increase obtained by typical line employees throughout the economy over the same period. The *Institute of Economic Affairs* (IEA) and the *Centre for Policy Studies* claimed that a '*public sector aristocracy*,' comprising such people as the NHS senior managers, was emerging in the UK at a time when living standards were under threat as never before. Their analysis revealed that, at the highest level, NHS senior manager salaries had risen to above, or just under £300,000 p.a. Just below them thousands of executives at hospital trusts and clinical commissioning groups were earning an average £145,000 p.a. they added. Far too much of the Department of Health's annual £200bn budget was being spent on "inflated salaries for bureaucrats and managers," said the IEA. To enact NHS reforms, it has been announced already that 42 new management roles are being created with salaries up to £270,000 each. By contrast, nurses were paid on average £34,000 p.a. while midwives got just £2,000 more. New analysis by Policy Exchange shows that the number of people working in the Department of Health and NHS England had doubled in two years, especially in the higher management grades. As fears grew that the Chancellor's 1.25 percent NICs hike would end up paying for their salaries, it was not yet known how many of the additional bureaucrats were hired on short-term contracts. NHS chief Amanda Pritchard is being paid £255,000 p.a, about one third more than her predecessor, Lord Stevens.

"*Protected from the discipline of the free market, the NHS's near monopoly on healthcare has allowed a culture of entitlement and extravagance to flourish. While the rest of the nation endures a cost-of-living crisis, the public sector aristocracy continues to thrive*," said Christopher Snowden of the IEA. Yet in April more than 24,000 people had to wait more than 12 hours on hospital trolleys in English A&E departments, the highest number for trolley waits ever recorded.

*Almost 750 town hall leaders were paid more than £150,000 in the year 2020-21, despite most staff working from home, leaving complaining residents struggling to contact local services, revealed the Taxpayers' Alliance. The ceo of Westminster City Council received a £6,000 rise, taking his salary up to £217,000, despite having to dismantle the £6m Marble Arch mound, at a further cost of £660,000 after widespread ridicule. The biggest winner in cash terms was Croydon's ceo, who received almost £614,000, including a large pay-off, when she quit just months before her Council issued a Section 114 Notice, effectively declaring itself bankrupt. Croydon council's auditors referred to "*Collective*

corporate blindness to both the seriousness of the financial position and the urgency with which actions needed to be taken."

*More than 40 percent of Russell Group university vice-chancellors (vc) had a pay rise during the pandemic, it has emerged, despite repeated government warnings that reward packages for top tier university administrators was getting out of hand. UCL (London) paid out the highest amount – £589,000 in vc pay – but shared between the out-going vc and the replacement – while the best paid individual vc was Alice Gast, president of Imperial College, who received total reward of £518,000, which was 11 times higher than typical lecturers there. In all, the 24 Russell Group vcs received £9.1m total reward in the year ended July 2021, of whom ten got a pay rise in the pandemic period, when most of their students had to rely on lectures and supervisions via *Zoom.*

*The Taxpayers' Alliance said in a report that only 2,921 people employed by local authorities in 2020-21 received more than £100,000 in total remuneration and 739 received over £150,000, 46 more than the previous year. The Institute for Government said that only 1,560 of the 456,410 civil servants earned more than £100,000 in 2020. Across the whole civil service, 55 percent of staff were paid below £30,000.

P&O sackings: new statutory code

In response to the P&O scandal, in late March the government announced plans for a new statutory code to better protect employees from fire and rehire type practices. Almost 800 of its staff were dismissed without prior consultation and replaced with cheaper agency workers. Although in the case of P&O Ferries, the employees and workers in question were dismissed and ultimately not re-engaged, with the company instead choosing to engage agency workers rather than the original employees on less favourable terms, the term "fire and rehire" was used extensively in the media to characterise the events. As P&O's actions constituted dismissal without consultation, the government echoed the ACAS Guidance and emphasised that fire and rehire should be an option of last resort and that employers *"should first have made all reasonable attempts to reach agreement through full consultation."* The proposed code of practice looks set to address the consultation element of fire and rehire, rather than the practice itself, said **Bird & Bird** lawyer Charles Hill. The government confirmed that the new code would lay out practical steps that each employer must follow in fire and rehire and courts and tribunals can apply an uplift of up to 25 percent of an employee's compensation if an employer unreasonably fails to comply with the code where it applies. This is a similar mechanism to the ACAS Code on Disciplinary and Grievance Procedures which, if not followed by employers where relevant, can result in a 25 percent uplift of any award at tribunal.

Employers are required under s.188 of the Trade Union and Labour Relations (Consolidation) Act 1992 to consult with employee representatives when employers are proposing to dismiss 20 or more employees within a period of 90 days or less and cannot dismiss any employee before a specific period has elapsed after the start of consultation. The length of the period varies, with 30 days for dismissals of between 20 and 99 employees, and 45 days required for 100 or more dismissals. This places a significant additional time and cost burden on employers seeking to implement changes concerning larger numbers of employees. In addition, when the collective consultation duty is triggered, employers are required to notify the Department for Business, Energy & Industrial Strategy (BEIS) of the proposed dismissals on form HR1. Failure to comply with collective consultation obligations can result in a *protective award* of up to 90 days' pay per affected employee, and a failure to notify BEIS of the proposed dismissals can be a *criminal* offence which can lead to a potentially unlimited fine and even liability for individual directors involved in the failure to notify BEIS.

Business owners tax relief attacked by IFS

The top 0.1 percent of UK earners have annual incomes in excess of £500,000, said a study by a leading think-tank which claimed the effect of reduced tax rates available to business owners was "unfair." More than 50,000 people in the top income bracket account for six percent of all earnings – 60 times greater than their population share, said the **Institute for Fiscal Studies** in a report covering the decade to 2019. It showed that more than half of the top one percent of richest adults lived in London and the south-east, while almost 60 percent were aged between 45-64 and as few as a fifth were women, reported *The Guardian.* The report, *Top Income Inequality and Tax Policy*, showed that earnings from self-employment and business ownership were far more important for those at the top end compared to low and middle earners. It argued that reforms

could be launched to tackle unfairness in the tax system because income from *company ownership* is taxed at a lower rate than earnings from *work as an employee.* Alex Beer, from the Nuffield Foundation, which funded the research, said: "*The current design of the tax system, including the way in which different forms of income are taxed at different rates, is unfair and inefficient, penalising employees and distorting investment decisions, to the detriment of social wellbeing."* The IFS report claimed that business income – from either self-employment or owning and running a company – accounted for 21 percent of total incomes for the top one percent of adults and 29 percent for the top 0.1 percent, compared to just nine percent for the rest of the population at large. It said business owner-managers could choose to take income out of their company through the form of a salary, dividends, or capital gains – allowing them to benefit from lower rates of tax. It highlighted the preferential ten percent rate of CGT, i.e. *business asset disposal relief,* when exiting. Meanwhile company owner-managers were able to access tax rates of just 27 percent on income taken in the form of capital gains. In comparison, the average tax rate on *wage earners* in the top one percent was 42 percent. The government set the basic rate of income tax at 20 percent on earnings above the tax-free personal allowance of £12,571, up to £50,270, with a rate of 40 percent on income above £50,271, and 45 percent above £150,000. Despite the lower tax rates open to business owners, the IFS said taxes on the highest-paid wage earners had gone up in recent years. As a result, the share of overall after-tax income in the UK received by the highest paid employees had fallen from 14 percent in 2009-10 to 11 percent in 2018-19.

WORLD NEWSPAD

***China:** Shareholders in **Alibaba**, the world's second largest ecommerce business, were spooked after unconfirmed rumours falsely suggested that its founder, Jack Ma, had been arrested. The company's Hong Kong-listed shares fell by almost ten percent following a report in Chinese state media that a person named "Ma" had been detained by authorities in Hangzhou, the eastern city, on suspicion of using the internet to endanger national security. Ma is not an unusual name in China, however, and a later announcement by state media confirmed that the person who had been arrested was not the founder of Alibaba. State-run *The Global Times* said that the arrested person worked for an IT company and had started an online group to "subvert the state".

***Denmark** appeared to be heading in the same direction as Norway (*see last month's newspad)*, by reducing the tax advantages of participating in all-employee share schemes. A new Danish employee share scheme came into force in January last year, in which qualifying SMEs can award employees shares or options worth up to 50 percent of the employee's annual salary to be taxed favourably, as share income, instead of personal income. However, some all-employee equity schemes outside what is called the 7P tax scheme may be taxed on grant, rather than vesting, which is generally disadvantageous for participating employees. In **Norway**, the tax exemption on the purchase of shares at a discount was abolished this year. The benefit from the purchase of shares at a discount is fully taxable. The Norwegian tax administration has been implementing a new model for taxation of employee options in companies which are eligible for the scheme. Under this new tax umbrella, the allocation or the redemption of share options will not trigger a liability to pay tax. Tax liability or deduction entitlement occurs when the options are realised. The scheme replaces the separate tax scheme regarding options for small start-up companies that was introduced in January 2018. A transitional scheme was introduced so that options issued from 2018 were transferred to the new scheme. Special conditions link the employer (the company), the option, the employee and reporting. Options in employment relationships covered by the new model should **not** be taxed as salary income and should not be reported. Norway's new employee share options scheme has the following features: *The gain derived from employee share options is no longer taxed as employment income, but rather as share capital gain from the sale of the shares. Employers are no longer liable to pay social-security contributions on gains derived from their granted employee share options. *Larger and older companies are included in new the scheme: *Eligible companies can have up to 50 employees (up from 25). *Eligible companies can have an annual turnover and balance sheet of up to NOK 80m (up from NOK 25m). ESA approved the scheme, concluding that it was in line with EEA state aid rules.

German *Steward-owned companies are for profit, but the money they generate isn't extracted by investors, reported the FT backed website *Sifted*. Instead, it's reinvested into the company to promote its mission or simply given away to charitable causes. While steward ownership hasn't been widely adopted among tech companies, a few European start-ups have made the transition in the last few years. These include *Einhorn*, a sustainable

condom brand; *Vyld*, which makes tampons out of seaweed; and *Nevi*, which makes environmentally friendly materials from birch bark. In Germany, a purpose over profit movement is taking off and the government is planning a legal template to make it easier for start-ups to adopt the structure. Many start-ups are paying closer attention to how their businesses affect the environment and society and are focused on creating impact beyond the bottom line. Steward-owned companies can never be bought or sold — but investors can earn money back on their investments through dividends or capped returns. *"You as a company owner hand over the capital shares to a foundation, which ensures that you fulfil your promises as a steward: to not sell the company or take profits out of it, but you still have all the freedom as the entrepreneur to make the decisions*," said Christian Kroll, founder and ceo of *Ecosia*, a tree-planting search engine, which transitioned to steward ownership in 2018. *For this model to be widely adopted by business, it needs to become enshrined in law*, said Kroll. He expects Germany's attempt — called The Purpose GmBH — to be fulfilled during the next two years, but other governments aren't making such moves. "*Often, businesses are started by very passionate founders who have a clear purpose, but sometimes that purpose can get lost when you invite in investors, employees or other stakeholders who can change the course of the business*," said Esme Verity, founder of *Considered Capital*, a school which educates founders on alternative funding routes and ownership models. "*Steward ownership means that purpose is locked into your business in a very immovable manner*," she adds. To ensure that purpose is reflected in business decisions, steward-owned companies separate their shares into classes which split the voting rights and the economic rights. This allows control of the business to remain with the founders and employees — while capital rights are given to a foundation to safeguard. This foundation can block decisions that could compromise the company's mission, such as an exit. Companies such as Robert Bosch, Tata Group, ThyssenKrupp and the John Lewis Partnership all have a trust that safeguards their long-term development.

One such company is London-based *Library of Things*, which offers a catalogue of things for people to **borrow**, from lawnmowers to pasta makers, to motivate people to rent rather than buy. Inspired by steward ownership, Library of Things fashioned its own governance structure - a "purpose before profit" company, which legally mandates the directors and shareholders to put the company's mission first. The company has a **guardian shareholder** — a separate non-profit which doesn't hold shares, but which brings stakeholder perspectives to big strategic decisions. The guardians have veto powers too. "*You can think of the mission guardians as a wise elder, like a grandma*," says co-founder Emma Shaw. There are three members who represent borrowers, local partners, investors and the planet. "*The idea is for the membership to grow over time so that it represents the people who are impacted the most by what we do as a company*."

Buy Now Pay Later* Swedish firm **Klarna plans to cut around 700 staff (*ten percent of its 7,000-strong workforce*) as it warned of a "*likely recession*". It blamed a combination of rising prices, a change in consumer sentiment and the Ukraine crisis for the move. "*What we are seeing now in the world is not temporary or short-lived, and hence we need to act,"* said ceo Sebastian Siemiatkowski.

*The average **US** ceo:employee pay gap widened again, as top executives who took pandemic pay cuts more than recovered lost earnings in the last year. Ceos made **254** times more than the average employee in 2021, up seven percent from the previous year, revealed the *Equilar 100*, which offers an early look at ceo compensation among the largest companies by revenue, who filed 2021 proxy statements by March 31 this year. In 2021, median ceo compensation reached ***$20m***, a 31 percent increase from the year before, due to big jumps in stock awards and cash bonuses based on market performance and company productivity. Bonuses, LTIPs and stock options, together comprise 85 percent of ceo compensation, said Lawrence Mishel of the Economic Policy Institute (EPI). By comparison, ceo pay fell by just 1.6 percent between 2019 and 2020 due to pandemic cuts, to $15.5m. Median employee compensation at Equilar 100 companies rose from $68,935 in 2020 to $71,869 in 2021, a mere four percent increase. Equilar said that this was due in part to companies offering bonuses and other cash payouts in the recovering economy. The EPI estimated that ceo pay had increased by 1,322 percent since 1978, compared to an 18 percent average rise for typical employees during the same period.

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