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# it's our business

newspad of the Employee Share Ownership Centre

## MPs blame HMRC over Roadchef compensation scandal

A cross-party group of MPs has tabled a new House of Commons *Early Day Motion* (EDM) accusing HMRC of blocking the former Roadchef Esop participants from receiving their long overdue compensation payments. The MPs allege that HMRC still has not yet confirmed how much tax will be charged on the pay-outs. In addition, the MPs are calling for independent mediation as a last resort means of stopping the case going back to the High Court, which would involve months, if not years, of further delay.

Furthermore, they accuse HMRC of having concealed certain information about the case, which goes back 20 years to when the Esop participants' shares were transferred, without their express approval, from one EBT to another, before being sold to the Japanese company Nikko, which acquired the Roadchef group in 1998.

The ten MPs, mainly Labour and SNP, used the EDM as a vehicle for casting HMRC in the role of *whipping boy* for the escalating scandal. Their motion, tabled by **SNP MP Neil Gray** attracted the support of veteran Tory backbencher and former transport minister, **Sir Peter Bottomley MP**, as a co-sponsor. It reads in full: "*This House deplores the failure by HMRC to resolve its long-standing dispute with the Roadchef Employee Benefits Trust which is preventing the Trust from distributing funds to 4,000 beneficiaries; notes that* ***six years*** *have elapsed and HMRC has not confirmed what tax, if any, the Trust and its beneficiaries will be liable for; believes that many current and former low paid catering and cleaning staff who worked at Roadchef Motorway Services including at Harthill, Killington Lake, Sandbach, Watford Gap, Strensham, Taunton Deane, Magor and Pont Abraham have waited many years for money and that some have sadly died during the process;* ***further believes that HMRC has withheld crucial information which could have resolved this matter earlier***; and calls on ***HMRC to resolve this dispute as a matter of urgency through independent mediation, if necessary, and ensure that all the Roadchef beneficiaries can receive the money they deserve***."

The language used by the exasperated MPs in this new parliamentary motion is much tougher than that used in the first motion, tabled almost two and a half years ago and which, as amended, was signed by 16 MPs. This time MPs have directed their fire-power at HMRC. The earlier version, though mentioning HMRC, had steered away from apportioning blame for the failure to implement the January 2014 High Court ruling: "*It is with concern, however, that Patrick Gee's former successor, Timothy Ingram Hill,*

### *From the chairman*

*With the odd campaign underway we are making timely bids to influence the parties' platforms. History tells us that what we need is a leader with conviction (Thatcher, Brown) to effect transformation. Party allegiance is immaterial. Of the current leaders Jo Swinson is personally nearest to our thinking but that is not true of the rest of her followers - Ed Davey et al.*

*What we need is a bipartisan approach such as works well in the United States, of which we shall hear more this month from Democrat Representative Paul Mark of Massachusetts in Guernsey and at a high table dinner. Paul leads for the Democrats in joint efforts to move esops forward.*

*This would never work in our ludicrously adversarial House of Commons but I shall look to encourage a multiparty Esop group of peers who could put a common platform before the lower House in the same way that the Houses, federally and a state level in the US, put their plans to the executive.*

*I was sorry to see that our first Small Business Commissioner Paul Uppal has resigned early. The appointment of a Commissioner in the UK might have been a first step towards creating a US-style Small Business Administration which we sorely need. Recently after bipartisan recommendation and executive sign-off the SBA created a mechanism to guarantee bank loans to esops, using government power without digging too deep into a purse with many moths.*

***Malcolm Hurlston CBE***

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

To his credit, the trustee, **Christopher Winston Smith** of **Reed Smith,** succeeded in winning back for the beneficiaries the c.£10m which Mr Ingram Hill is thought to have paid HMRC in 'tax' on the share sale, which the judge, Mrs Justice Proudman ruled null and void in the High Court. Tax cannot be paid on a transaction which, legally, never took place.

Exact numbers are hard to come by as both HMRC and the Roadchef EBT trustee are refusing to answer most media enquiries, but roughly 350 surviving Roadchef Esop beneficiaries stand to share 61 percent of multi-million pound compensation from former Roadchef chairman and ceo Tim Ingram Hill, as ordered by the High Court.

The other beneficiaries are those employees who did not participate in the Esop, plus those who worked for the motorway services company in subsequent years.

However, Mr Winston Smith *has* revealed that he and HMRC are locked in a bruising battle over whether or not the Esop beneficiaries should pay tax on their individual compensation pots and, if so, how much. The trustee has threatened to take HMRC back to the High Court unless the dispute is settled soon.

Meanwhile, legal and financing case costs are still ticking up – with the beneficiaries already facing a final collective bill of about £4m.

Centre chairman and founder **Malcolm Hurlston CBE** has written to HMRC's new **Tax Assurance Commissioner,** Melissa Tatton, asking her to resolve urgently the scandal of the unpaid compensation. The role of Tax Assurance Commissioner is to strengthen HMRC's governance and assurance of tax disputes. It provides assurance to parliament and the public that HMRC handles civil tax disputes in accordance with the law and with their litigation and settlement strategy. The chairman told Ms Tatton: *"The latest multi-party EDM makes serious allegations against HMRC which have not previously been aired in public and there is a Gordian knot to be cut. There are many guilty parties as more beneficiaries die. I hope you can bring it to the right end."*

The key question now is: Why should the long dispute between the Roadchef EBT1 trustee and HMRC - over whether the Roadchef Esop beneficiaries should have to pay tax on their compensation sums - have to go back to the High Court almost six years after the original ruling in their favour?

Another thin sliver of hope for the Esop beneficiaries came with the appointment of **Mel Stride MP,** former Leader of the Commons, as new Treasury Select Committee chairman. When Mr Stride served in the Theresa May government as financial secretary to the Treasury and paymaster general from 2017 to 2019, he had to bone up on the Roadchef campaign when MPs put down the first Commons motion to highlight the plight of the former Roadchef Esop participants.

**General Election leaves share plans sector bemused**

The government's call for a General Election on Thursday, December 12, leaves the UK share plans sector in the dark as to whether or not it will be impacted by the Brexit morass next year.

Brussels had eased the tension by offering a three month 'flextension' EU departure deadline until January 31 next year, but the election campaign will punch a big hole in the time available for agreeing, finally, an EU divorce deal. For whoever wins the General Election will likely have only a week – until Friday December 20, when Parliament probably will go into recess – before the big Xmas and New Year shutdown.

Realistically, Monday January 6 is the earliest parliament can reconvene, which would leave only four weeks before the new departure deadline expires. Another hung parliament would make that task ever harder to achieve and what would happen if MPs then failed to meet the Brexit deadline is anyone's guess.

Earlier, PM Boris Johnson had raised hopes for a quiet Xmas by winning a House of Commons second reading for his proposed 'Canada Lite' **Withdrawal Agreement Bill (WAB),** but when opposition parties demanded more time to scrutinise all the clauses and voted against the short timetable, he pulled the Bill and demanded an immediate General Election. All was in flux again as the PM announced that WAB would be put in the freezer for the time being.

WAB's new terms (as agreed with Brussels) include a revised **Political Declaration** (which sketches proposed future EU-UK relations) and a protocol concerning Northern Ireland, replacing the controversial backstop. Essentially, there would be a **status quo transition period** until December next year, extendable for up to two years by mutual agreement, during which EU law would continue to apply in and to the UK and the UK would continue to trade as part of the EU Single Market and Customs

Union, though no longer being an EU Member State. The UK would be bound by obligations resulting from international agreements concluded by the EU on behalf of the member states too.

No progress was revealed in WAB or the Declaration on financial services equivalency governing, for example, two-way data transfers, or similar concepts such as mutual recognition. Regarding the financial (divorce) settlement, citizens' rights, and the implementation period, it was more or less the same as in Mrs May's deal.

The share scheme sector noted that, as chancellor Sajid Javid's planned November 6 Budget presentation had been cancelled, service providers and share plan sponsors would have to study the Tory election manifesto to learn whether there would be any major changes in the structure of the current tax-approved all-employee share schemes, were BoJo to be returned to power. Sajid's role in the extension and consolidation of employee share ownership in the privatised Royal Mail was greatly appreciated by the Centre.

The **Centre** believes that employee share ownership in the UK is in urgent need of a re-set. Some of the short-term ideas which the next government should look at are:

- Offer companies – not just employees - tax incentives for operating an employee share plan or profit-sharing plan
- Make **SAYE** plans (the most popular share plan for employees) completely exempt from Capital Gains Tax?
- Allow **Share Incentive Plan (SIP)** participants to cash in full tax protected value from their holdings after three years, instead of the current five, to reflect the fact that people change jobs more frequently these days.
- Double the **Company Share Option Plan (CSOP**) maximum tax protected investment limit to £60K, in order to increase its appeal to all levels of employees.
- Similar to pension auto-enrolment, should employees be forced to opt out if they did not wish to participate in Eso plans
- Make it much easier for mobile employees to transfer the value of their employee shareholdings – into another Eso plan - when they resign in order to start new jobs. *Give employees the legal 'right to request' that an employee share plan should be established.

To date, the **Conservative** governments of Theresa May and Boris Johnson have not majored on Esop in overall terms despite the hustings hope from May of reaching the 'just about managing.' The Tory-Lib-Dem coalition government under David Cameron raised the savings limit for SAYE-Shareshave schemes, which doubled from £250 to £500 a month, and the maximum value of shares an employee can acquire with tax advantages through Share Incentive Plans (SIPs) was increased by £300 a year to £1,800 for partnership shares and to £3,600 a year for free shares.

According to a policy paper in the name of shadow chancellor John McDonnell **Labour,** if elected to government, plans to make 7,000 private sector companies who employ more than 250 employees transfer at least one percent of their equity every year for a decade to the workforce, via employee-owned Inclusive Ownership Trusts, to create a permanent employee share pool in their businesses. Compulsory employee ownership in all larger companies could result in up to 10.6m employees each being given up to £500 worth of dividends each year. Labour calculates that, collectively, employees covered by the scheme would receive about £4bn a year in share dividends by the end of Jeremy Corbyn's first term in government. Meanwhile, any additional income from dividends would go to a national fund to pay for public services and welfare, which would effectively be a new levy on private sector business worth an estimated £2.1bn a year

Mr McDonnell plans to scrap executive share option incentives too, if he becomes chancellor. He would force companies to pay executive bonuses in cash instead. At a stroke, this would kill off share option based tax-approved schemes, such as the Enterprise Management Incentive (EMI) and might inhibit the prospects of SAYE-Sharesave too. Not too much credence should be accorded to these 'plans' but they highlight the danger of hijacking share scheme tax benefits to benefit the better off.

**Lib-Dem** leader Jo Swinson is a big fan of employee share ownership and so Esop is certain to feature in the party's election manifesto, unless the narrower views of Sir Ed Davey prevail.

So what are the potential stress points for the financial services sector, including employee equity plan services, assuming a 'Canada Lite' type deal can be ratified?

Some business services, such as types of consultancy work, are not regulated by the EU, so UK-based companies will continue to provide them seamlessly post Brexit.

*The EU requires regulatory compliance in many other business sectors, such as **information and communications technology, transport, legal and accounting and tax advice.** After the WA comes into force, the UK will need to **renegotiate 759 treaties; financial services**, the jewel in Britain's export crown, are particularly sensitive.

***Equivalence** provisions in EU legislation give foreign-domiciled companies the right to market their services to clients in the bloc only if Brussels judges their domestic rules to be sufficiently rigorous. Such access rights can be revoked at any time and depend on countries aligning closely to EU standards**,** reducing the scope of any post-Brexit regulatory divergence. In areas where such access provisions are not available, there is no alternative for companies other than explicit compliance with EU rules and regulations in exchange for market access, which can be difficult for overseas companies subject to another jurisdiction's rules.

***Continued data protection flow deal** could take at least a year post Brexit. Here's what the Political Declaration says about data protection: "In view of the importance of data flows and exchanges across the future relationship, the Parties are committed to ensuring a high level of personal data protection to facilitate such flows between them. The EU's data protection rules provide for a framework allowing the European Commission (EC) to recognise a third country's data protection standards as providing an adequate level of protection, thereby facilitating transfers of personal data to that third country. On the basis of this framework, the **EC will start the assessments regarding the UK as soon as possible after the UK's withdrawal, endeavouring to adopt decisions by the end of 2020, if the applicable conditions are met.** Noting that the UK will be establishing its own international transfer regime, the UK will, in the same timeframe, take steps to ensure the comparable facilitation of transfers of personal data to the EU, if the applicable conditions are met. The future relationship will not affect the Parties' autonomy over their respective personal data protection rules. In this context, the Parties should make arrangements for appropriate cooperation between regulators."

While the UK has legislated to allow the free flow of personal data from the UK to the EU in the event of a no-deal Brexit, EU authorities have not taken reciprocal action, the law firm Brodies said. This could limit consumers and businesses accessing financial services from, and continuing contracts with UK financial service providers.

## Equity For All

A study report, entitled ***Equity For All,*** called for an overhaul of the **Employee Ownership Trust (EOT)** structure in order to allow employees to build up their own shareholdings in the businesses for which they work. Solicitor Ann Tyler, chair of **Ownership at Work**, which is a partner of the **Employee Ownership Organisation,** said: "This paper is a radical plan to encourage more companies to give employees a stake in the business in which they work that could create 1.5m employee owners by 2030 and the biggest share out of wealth in a generation." EOTs were introduced by the government in 2014. The report's foreword is written by Julian Richer, founder of **Richer Sounds**, who is selling most of his shares to his employees via an EOT. He said: "This paper tells other owners, and their advisers, about the kind of trust we used to transfer ownership of Richer Sounds to the employees. The fact that use of these trusts is growing fast is evidence that employee ownership can be a terrific solution for a swathe of business owners."

The report said that owners should receive a higher proportion of their sale proceeds in cash. Unlike a trade buyer or a private equity buyer, an EOT buyer does not have its own cash with which to pay the vendors. Instead EOTs rely on patient vendors willing to wait several years for full pay-out. "Current EOT rules mean employees cannot easily acquire their share of the EOT's stake; ownership is exclusively collective. This could lead to unintended pressure to sell the business as a way for employees to unlock the value of their collective stake. A survey by one consultancy shows the equity value per employee could be as high as £175,000 once vendor loans have been repaid."

The report said: "***We recommend that EOTs should have the flexibility to allocate shares to individual employees, as with the current Share Incentive Plan (SIP).*** Combining the functions of the SIP and the EOT would allow beneficiaries to build a significant personal stake in the business; and could be extended to private equity backed companies, in which employee ownership is largely absent.

"In the twenty EOT transactions advised on to date by Centre member **RM2 Partnership**, the ***equity value per employee will be £175,000*** once vendor loans have been repaid, assuming pessimistically no increase in the value of the company in the meantime. One can imagine some employee beneficiaries questioning why such value should remain inaccessible to them indefinitely," said the report's author, Nigel Mason, now an associate at RM2 , which is wholly owned by an employee trust.

The EOT offers incentives to business owners and employees. For owners there is an exemption from capital gains tax; for employees there are income tax free bonuses.

*There are now about 275 EOTs in the UK covering 23,000 employees and their number is increasing at the rate of 30 percent per annum*.

Employees of an EOT-controlled company may receive income tax free bonuses (up to £3,600 per person per annum), provided it pays those bonuses to all employees on similar terms. Although paid by the company and not the EOT, the bonus simulates employees receiving a dividend distribution from the EOT's majority shareholding. Many EOTs intend to remain independent for the long term, especially those that are wholly trust owned. They have no intention of distributing shares to employees and are content to pay cash bonuses from profits.

A minority have established Eso schemes alongside the EOT stake. These shares are usually reserved for selected employees, so that, for example, the management team who might have had their sights set on an MBO can still enjoy the rewards from minority share ownership alongside the EOT – but without the prospect of a classic exit route, such as a trade sale or an IPO. Combining employee ownership with pension saving would lift saving rates while widening employee ownership. Just doubling the current growth rate of EOTs by 2030 would create more than 9,000 employee owned companies and over 1.5 million employee owners, the report forecast.

## EVENTS

### Guernsey, November 8: Last chance to book

**Paul Mark**, the US Democrat lead on employee ownership in the Massachusetts House of Representatives, is a late addition to this month's **Esop Institute/STEP Guernsey share schemes & trustees' seminar** on **Friday November 8** at the Old Government House hotel, St Peter Port. In his keynote speech he will give an insight into the political momentum behind the growth in employee ownership in Massachusetts and what we can learn from the bi-partisan approach followed in the US at federal and state level. He will meet Guernsey's prime minister and former Centre director **Gavin St Pier.** If employee share schemes and trusteeship matter to you, it is now more important than ever to stay informed, especially given recent developments. Even if the world turns upside down in the meantime, you may be sure our speakers will adapt to the challenge. Our seminars offer expert views and the pleasure of continuing education, along with opportunities to discuss and network. Our speakers - from **CMS, David Craddock Consultancy Services, Haines Watts, Pett Franklin** and **Zedra** - will shed light on the key issues currently facing trustees and employee share scheme professionals. Topics as of now are: ● **Can HMRC ask for that?** Under CRS, Schedule 36 specific information and documentation from advisers is being sought. How did we get to this position? What is reasonably required? Does HMRC have jurisdictional rights over the Jersey/Guernsey? Actual examples showing how poorly drafted some Notices are leaving the recipient having to guess what is being asked for! ● **EBTs as internal market makers for unquoted companies**; managing trapped assets within EBTs ● **The Investment Association principles** – changes to vesting and post employment shareholding requirements ● **UN Sustainable Development Goals 2030** and the role of employee share schemes ● **Entrepreneurs' relief** - an update on developments.

The seminar concludes with a networking lunch. Last year's event was an outstanding success, which we look to emulate this year, building on the popularity of this industry-leading networking and



learning opportunity. Prices: Esop Centre/STEP members: £375, Non-members: £480 Reserve your place by emailing events@hurlstons.com or calling 020 7239 4971

### Key new speakers at share plans symposium

A major employee share plan case study, promoted by Centre member plan administrator **Computershare** will be one of the highlights of the Centre's fourth British Isles share plans symposium on **Thursday, March 26**, next year. This slot will be introduced by experienced Centre conference speaker **Stuart Bailey.** Another newly registered speaker is **Claire Prentice** of **Travers Smith's** incentives & remuneration team. She will examine *which elements contribute most to cost-effective global equity plans*

The symposium is being hosted by member **Linklaters** at its **Silk Street**, **London EC2** HQ and its speaker will be **Harry Meek.** His theme will be: *The changing landscape of investor and corporate governance expectations* regarding executive equity reward. Harry will focus on three key issues: Regulatory developments impacting remuneration in the financial services (FS) sector - challenges to the way banks and FS firms have been operating their incentive arrangements; Listed company investors and corporate governance expectations are catching up, as concepts the FS sector has been dealing with come to the fore, such as: #Operating malus and claw-back in practice, #Use of discretion in determining vesting outcomes and #Measuring non-financial risk and culture as part of incentive plans; Finally, what listed companies can learn from the challenges and developments faced by the FS sector in share plan design and operation.

There is only room in the programme for one more speaker slot, so if any other Centre member wants to speak at the symposium, apply **now** by emailing Fred Hackworth at: fhackworth@hurlstons.com. Plan issuer company representatives who deliver an all-employee or executive equity incentive plan case study (*with or without an adviser*) will be admitted free of charge, as will plan issuer company delegates.

The event will be chaired and introduced by Centre founder, **Malcolm Hurlston CBE**. He will ask delegates: *How could all-employee share plan schemes be re-set to make them more popular with* *companies and employees?* Other confirmed speakers at the symposium include:

**Colin Kendon**, partner (employee incentives) at **Bird & Bird,** will deliver a frank assessment of the popular *Executive Management Incentive (EMI)* share options based approved scheme, which is being operated by more than 10,000 UK SMEs. During his tour of the 'ins and outs' of the HMRC tax-approved scheme, Colin will talk anecdotally about the use of 'Exit Only' EMIs.

**David Craddock,** who heads his eponymously named worldwide share schemes consultancy, will explain how SME companies are valued, so that employee shares can be issued. David is technical secretary to the ground-breaking *Worked Examples Group* which the Centre administers

**Martin MacLeod** of **Deloitte** will ask *whether recent changes in the UK corporate governance code go far enough on the executive reward front;*

**Jennifer Rudman** of **Equiniti** will address a key question: *How do you ensure that all employee plans (Sharesave and SIP) continue to be relevant and provide benefits for today's workforce?*

**Garry Karch**, the leading Esop banker in the UK, will explain *How Employee Ownership Trusts (EOTs) are structured and financed.*

**Jane Jevon** of **Pett Franklin** takes the dust covers off the *Company Share Option Plan (CSOP), the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.*

**Robin Hartley,** a senior associate of **RM2,** will discuss how best to structure and install *growth shares* in companies. Expect another punch up (aka lively discussion) as Robin presents his controversial ideas.

The practitioner member speaker rate is **£275** and member delegates will pay **£395.** Trustee members will pay **£330** for their seats. Non-member practitioner delegates will pay **£595** (all ticket prices are VAT-able). Plan issuer participants: ***free of charge***. The programme to date can be downloaded from the Centre website www.esopcentre.com.

## MOVERS AND SHAKERS

### New member

The Centre is delighted to welcome back **Investec Bank** in the form of **Investec Share Plan Services (ISPS).** ISPS has dominated the South African share plan market over the last 15 years and formally established its UK arm in 2016. ISPS is a division of Investec Corporate and Institutional Banking where Investec is corporate broker to multiple small to large-cap companies. Globally, ISPS services over 150 corporates with 450,000 underlying participants. ISPS utilises Investec's wider infrastructure and expertise which allows it to provide a unique, all-in-one-place offering in a secure, regulated environment. It offers the market proprietary share plan administration software, corporate equity and FX trading, safe custody, settlements and payment service all under one roof. In addition, its clients and their underlying participants benefit from Investec's award winning wealth and private banking services. Investec Centre contact details: **Alena Denner**: email: aleda.denner@investec.co.uk T: +44 (0)20 7597 5605 and **Kevin Lim**: email: kevin.lim@investec.co.uk **T**: +44 (0)20 7597 4294, who rejoins the Centre's steering committee.

### On the move

The **Institute of Chartered Secretaries and Administrators (ICSA)** has changed its name to **'The Chartered Governance Institute'** following a vote by members. Gabbi Stopp**,** director of ProShare, an arm of the **Chartered Governance Institute,** is leaving her post to become ceo of **ShareGift,** the share donation charity. Sara Drake, ceo of ICSA, announced that **Peter Swabey**, its policy and research director, will take on responsibility for ProShare, working with **Zoe Denny-Thomas.**

**Companies House'** new office address is now: Companies House, Ground Floor, 80 Petty France, Westminster London SW1H 9EX.

**Tania Bearryman** has been promoted to operations director and change lead at Centre member **Intertrust.**

**Jersey Finance** opened a new office in New York, promoting itself as a gateway to Europe for alternative fund managers. The opening event at The Peninsula on October 16, was attended by 100 lawyers, intermediaries and US fund professionals, who heard from Senator Ian Gorst, for the government of Jersey, and Joe Moynihan, ceo of Jersey Finance, about Jersey's growing ties with the US.

### Newspad 2019 share plans awards

Recognition of the role of best HR director in the planning and operation of employee equity plans is reflected in this year's edition of the ***newspad share plan awards***. A separate category has been created to attract entries from HR directors who have demonstrated their commitment to the maintenance and spread of employee share ownership within their companies. HR directors and their staff are often the unsung heroes of successful all-employee share plans.

Another new Award category this year is that of **Best employee share plan practitioner (**with examples of client work**),** which should galvanise some of our many share plan service providers into sending us evidence to show that they are the best of the bunch.

**Entries** are invited for the awards, which recognise the achievements of companies which offer employee share plans and hold up best practice models for other companies to follow. Companies can nominate themselves, or advisers can make submissions on behalf of clients. The deadline for all nominations is **1700 hrs on Friday November 29**.

The award categories this year are:

- **Best all-employee international share plan (**more than 2,500 employees)
- **Best all-employee share plan (**fewer than 2,500 employees)
- **Best share plan communications**
- **Best HR director (**for provision of employee equity)
- **Best share plan presentation** (e.g. new features or new plan)
- **Best use of technology in employee share plans**
- **Best creative solutions (**taking account of employee feedback, equality work, cultural and jurisdictional issues
- **Most improved step change participation** (best push on comms and/or more generous offer terms)
- **Best executive/managerial equity reward plan (**involving more than 100 senior employees)
- **Best employee share plan practitioner (**with examples of client work)
- **Best start-up equity incentive plan**
- **Company with highest percentage of employee agm shareholder votes**

Application process: ***Online application form -** complete all sections of the form, providing as much detail as possible. (Alternatively, entries can be made by one or two explanatory documents) *__Supporting documentation__ - where appropriate, please back up your application with supporting documentation. Either upload the files at the end of the form, or email them to esop@esopcentre.com.

Category descriptions and rules and conditions of entry are listed on the Centre's website www.esopcentre.com/about/awards.

If you have any queries, please contact us at esop@esopcentre.com or call **+44 (0)20 7239 4971.** The winners will be decided by two impartial judges, experts in the use of employee equities, plus Malcolm Hurlston founder of the Esop Centre**.** The finalists will be announced in *newspad* early in the New Year. This year Brian Basham chairman of Equity Development joins the panel



## UK CORNER

### Scrap Entrepreneurs' Relief, urges IFS

The **Institute for Fiscal Studies (IFS)** is questioning the value for taxpayers of **Entrepreneurs' Relief (ER)**, claiming that it does little to promote business investment and only makes wealthy people even richer. The *think tank* told the chancellor Sajid Javid that the tax break leads to people "adjusting how and when they take money out of their company", but does little to change "the amount of income they create or how much investment they do."

Centre practitioners, however, are divided in their views about the importance of ER (*see quotes below).*

Previous chancellor, Philip Hammond, refused to scrap the relief, which allows business owners and investors to pay a lower ten percent rate of Capital Gains Tax (CGT) when they sell qualifying assets, compared to the normal 20 percent, but he did tighten the qualifying rules.

ER is of great interest to owners of start-ups and many other SMEs because its tax benefits can be combined with those offered by the share options based **Enterprise Management Incentive (EMI**) to halve CGT in certain circumstances.

**Colin Kendon,** partner at **Bird & Bird,** said that Entrepreneurs' Relief was a key UK weapon in the worldwide battle to attract top commercial talent. He told *newspad: "The IFS needs to ask whether ER encourages people to take risks by setting up businesses and/ or moving from safe jobs to more risky start-ups – my experience is very much that it does. They also need to ask whether ER encourages entrepreneurs to locate their businesses in the UK – my experience is also that it does.*

*"I have no doubt being able to offer a ten percent tax rate on gains through EMI is a vital draw in the battle to secure the right talent. We absolutely need a tax system which encourages talented people into start-ups to help create the businesses of the future."*

**William Franklin -** senior chartered accountant & chartered tax adviser – and partner at **Pett Franklin** was lukewarm about ER. He said: *"Entrepreneurs' Relief would certainly be on life support if we had a government that prioritised doing something to start to remedy inequality. As far as share schemes are concerned, the changes last year after a false start* *are already likely to curb its use in unapproved schemes. If it disappeared completely, it would take some of the shine off the EMI ball, but EMI would still remain attractive."*

The IFS said Entrepreneurs' Relief cost the Treasury about ***£2.4bn*** per year in lost tax income and was not working as intended. It said: "*We do not find any evidence that tax-motivated retention of profits translates into more investment in business capital. If one of the aims of reduced capital gains tax rates on business assets is to incentivise individuals to invest more in their businesses, this evidence suggests they are not working*." IFS claimed that ER had helped wealthy business owners avoid higher rates of income tax by paying themselves through their companies. ER was introduced in 2008 by the then Labour chancellor, Alistair Darling.

### LTIPs under fire (again!)

UK companies should reconsider their use of executive long-term incentive plans (LTIPs) in favour of restricted share awards, urged a management think-tank. LTIPs are designed to boost performance, however such incentive plans have faced criticism as the rewards are often not tied to a company's share price. A report by the **Purposeful Company**, a think-tank established in 2015 with **Bank of England** support, said a quarter or more of companies should instead consider ***restricted*** or ***deferred share*** *models*. Under that system, part of an annual bonus is paid out subject to conditions taking performance into account over a longer period. Purposeful Company chair Clare Chapman told the FT*: "A quarter of all companies could and should shift their executive remuneration policies away from long-term incentive plans and towards simpler plans like restricted shares."* The report, which included responses from shareholders, companies, asset managers, proxy advisers and remuneration consultants, said four-fifths of investors and three-quarters of companies maintained that *deferred share schemes* were the best system for certain firms and industries in some situations. However, some investors and firms said the risks of using deferred share schemes could include payment for failure and fewer incentives. In September more than 50 percent of **Ryanair** shareholders voted against an LTIP for senior management and investor advisory firms criticised **Berkeley Group**'s plans, urging the house-builder to improve the alignment between performance and payout. Electrical goods retailer **Dixons Carphone** faced backlash over ceo Alex Baldock's LTIP.

### Bonuses for good ESG?

In its policy review**, Institutional Shareholder Services (ISS)** proposed that remuneration committees should disclose how they had taken into account environmental, social and governance (**ESG)** matters when deciding on remuneration outcomes. Examples are: workplace fatalities and injuries, significant environmental incidents, large or serial fines or sanctions from regulators and significant legal judgements or settlements, reported **Linklaters**. ISS said that remuneration committees had not always disclosed how they have considered ESG risks. It expects remuneration outcomes to reflect this, as well as financial performance, or provide a justification for not doing so. ISS expects to announce its final 2020 policy changes next month, to apply to agms from February 1 next year.

### Shares tax dodge condemned

A tax structure commonly used by private equity firms to shield investors from taxes on shares was 'abusive' and amounted to tax avoidance, the UK government's independent tax advisory panel ruled. This structure involved senior managers rearranging the terms of their work to qualify as *ordinary employees*, enabling them to take advantage of tax benefits and avoid income tax, capital gains tax, and social security taxes—an arrangement usually permitted for employees under the UK's semi moribund **Employee Shareholder Shares (ESS)** system. Employee shareholders gave up certain employment rights under ESS (*former chancellor George Osborne's baby*) in exchange for £2,000 of tax & NICs free shares which are exempt from **Capital Gains Tax (CGT)** on disposal. The tax benefits offered to **new** employees were removed by the government on December 1 2016.

In its **latest** opinion, the **General Anti-Avoidance Rule (GAAR)** panel described the structure it examined as "contrived" and "abusive." The GAAR panel ruled that the *disguised remuneration* scheme, involving employee rewards linked to a second-hand bond, was abusive tax avoidance, thus siding with HMRC.

The panel issued the opinion as controversy grew over 'employee loans, that come under what HMRC describes as the '**loan charge,**' on which loss of tax and NICs have so far cost HM Treasury **£3.2bn**, though more than **£1bn** to date has been recovered from individuals and contractor companies. Jim Harra, HMRC's interim ceo and Permanent Secretary, told the Commons **Public Accounts Committee'**s inquiry on HMRC's performance in 2018-19 that HMRC had settled about **8,000 loan charge cases** up to the end of August 2019, reported Centre member **Deloitte.** HMRC continues to work with people to settle, although it is expected that many will await the outcome of the independent review before they do so. The Treasury has asked Sir Amyas Morse, who is leading the review, to report back by mid-November. Mr Harra said that 19,000 people had provided HMRC with all the information that they need in order to settle. See https://deloi.tt/2PcVbER. Employers used those schemes to pay individuals their income through loans, usually paid out via offshore EBTs and to sidestep income tax and NICs, it said. The loans were structured in such a way that they would never have to be repaid. The panel examined a *packaged tax scheme* which used a series of transactions to pass on a reward to a company and an employee, who served as the company's sole director and shareholder, through their joint acquisition of a *second-hand insurance bond*. The scheme involved a loan, liability for which is assumed by the company and satisfied by the individual. The tools were a gilts option, further contributions to the bond, and 30 day cooling off rights, during which the investor could cancel their position in the gilts option and contributions to the bond. This financial tool kit enabled the individual to receive **£1.5m** from the company, money which, it was argued, was not 'earnings' under UK Income Tax and NICs rules, *even though the company claimed a tax deduction for that amount as the director's remuneration.* The panel found that the arrangements were similar to those when a company paid a cash bonus to someone as remuneration. The purpose was to ensure that an employee was rewarded in a tax-efficient way and to try to secure a **Corporation Tax** deduction for the payment. *GAAR advisory panel opinions aren't binding on HMRC or taxpayers, but a tribunal can take them into account before a case goes to court. If the panel gives a clear opinion on a case, then either HMRC or the taxpayer can decline to pursue the matter further if the opinion is not in their favour*. See https://tinyurl.com/y68ufp6b

*Tax barrister and employee share schemes expert **David Pett** criticised HMRC for having failed to launch a '*Disguised Remuneration*' type court case years ago - *similar to the one it **did** in the Glasgow Rangers soccer players' loans scandal* -had it done so, everyone would have known where they stood, vis a vis the law, said David. HMRC had imposed unrealistic repayment terms on individuals of modest means, he said in his submission to **Sir Amyas Morse** who heads the ***Loan Charge*** review. Mr Pett, a member of the Centre steering committee, criticised some QCs for having given legal opinions years ago either purportedly exonerating such schemes from the Employment Income Tax regime or, at the least, throwing sand into everyone's eyes as to their legality. Mr Pett told Sir Amyas: "*Contrary to the assertions made by many others, in the period from c 1992 – 2010, it was neither the 'received wisdom' nor the standard practice of all professional advisers, that clients should consider making use of EBT loan arrangements as a 'legitimate' means of avoiding, or reducing liability to, income tax and NICs on*

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*what would otherwise fall to be charged to tax as payments of earnings. Broadly, the opinion which I and my team consistently held and gave – long before the Glasgow Rangers case was litigated – was that consideration given by an employer, or, in ‘IR35-type’ situations, by the client, was properly to be treated and taxed as earnings, and that the fact that it was agreed that some or all of that money be received by way of loan from a trust did not alter the character of such earnings. I am aware that this was the view of many independent advisers and some counsel too. Nevertheless, the views reported to have been expressed by certain QCs [lending credence to EBT loan arrangements] appeared to carry disproportionate weight with* (some of) *those advisers seeking an opportunity to profit from the promotion of such arrangements. The final decision of the Supreme Court in the Glasgow Rangers case was wholly consistent with the opinions I and my team had given over many years, and for which we had come in for some criticism for ‘being too conservative’”* Mr Pett, a member of **Temple Tax Chambers**, added: “*It was open to the government in and before 2010 to have structured the Disguised Remuneration (DR) rules on the basis that any company putting funds beyond the reach of creditors by (for example) making a contribution to an employees’ trust, should be subject to an immediate charge to tax at, say, 40 percent on the amount (or even the grossed-up amount) of that contribution, on a basis which is similar to that of the charge to tax on ‘loans to participators’ under s455 CTA 2010. Credit could then have been given to the company against any subsequent obligation to account for PAYE tax on payments and benefits made out of the trust.*

*“This would have been relatively straightforward to legislate for and to enforce. It would have ensured that HM Treasury received tax on amounts earmarked for the provision of benefits, whether by way of loans or otherwise, at the earlier time when the company contributed the funds to the trustees. It therefore came as a surprise to me when, in 2010, I was first shown a draft of the DR rules and invited to comment upon them. When I asked why they effectively imposed charges on the individual employees, rather than upon the employer, I was told by HMRC officials that this was a direct consequence of a ministerial decision that the new levy should be structured as a charge on employees, not as a fresh ‘tax on business.’ Much of the complexity of the DR rules appear to stem from this early policy decision.”*

### Legal partners’ profit share at risk

Partners at one of the City’s top law firms will be fined 20 percent of their annual profit share if their behaviour breaches a new ‘***conduct protocol***.’

WHITE & CASE

*Freshfields Bruckhaus Deringer* confirmed that it would enforce stiff automatic financial penalties if internal investigations unearthed behaviour deemed to be unacceptable. Ryan Beckwith resigned from the Freshfields partnership recently after a tribunal fined him £35,000 for bringing the profession into disrepute. Mr Beckwith was found to have had sexual activity with a drunken junior female colleague at her flat after an office drinking session. The **Solicitors Disciplinary Tribunal** said that it had not considered issues of consent when making its judgement.

### New EU Directive includes co-determination

New rules for cross-border conversions, mergers and divisions of companies, are scheduled to come into force in 2022. Whether they will ever apply to the UK, in view of Brexit, is an open question. The **European Parliament** adopted, last April, the ‘**Company Law Package’** which is a negotiated compromise on EU company law. Earlier, proposals made by the **European Commission** triggered protests from the trade unions. In principle, following the transfer of a company’s seat to a country where co-determination does not exist, any supervisory board employee participation is to be permanently eliminated after four years. *Although there are minor improvements compared with the original draft, in the opinion of the trade unions the new Directive is not sufficiently precise and effective enough to prevent its potential abuse,* said the **European Works Council Academy**, which claimed that the new rules opened up new loopholes for avoiding participation and favoured the establishment of *letter-box companies*. An obligation to establish a European works council is missing. An abuse procedure aims to ensure that the company conversion is not used to prejudice the rights of employees, to avoid social insurance contributions or tax liabilities or for criminal purposes. Targets include shell or dummy companies, which are specifically founded for the purpose of avoiding national or EU legal regulations. Nevertheless, since the ‘Polbud’ ruling by the **European Court of Justice** in October 2017, companies are allowed to register themselves in another EU country where they do not have any business activities (see report in EWC News 2/2018). They can choose locations as ‘*places of refuge’* from fiscal and labour constraints e.g. to avoid strong employee participation.

**Letter box in Southend:** The German group works council of **Olympus** filed proceedings in the Hamburg labour courts on August 30 to enforce the establishment of a special negotiating body (SNB). Management is refusing to establish a works council and to restore employee co-determination in the supervisory board. All workers’ directors were removed from the supervisory board in 2013, during the company’s conversion into a **European Company** (*Societas Europea,* a public limited liability company known as an **SE**). Japanese owned Olympus manufactures optical and digital technology for medicine and materials testing as well as for cameras and microscopes. In June 2013, the Olympus group restructured in Europe and several SEs were founded without employees. The former holding company based in Hamburg was converted into an SE and relocated to Southend-on-Sea, the seat of Olympus in the UK. However, the holding company continued to be administered from Hamburg and operated as a pure *letter-box* company in England. The direct consequence was the dissolution of the German supervisory board, of which one third were works council members at the time. In October 2017, the holding company was relocated back to Hamburg. Since there were already more than 2,000 employees in Germany in 2013 and this is still the case today, full-parity co-determination would be applicable in the supervisory board.

**Pay us back, Thomas Cook executives told**

MPs demanded the repayment of millions of pounds worth of past bonuses received by senior executives of collapsed travel and package deal giant **Thomas Cook,** but don’t hold your breath**.** The **Commons Business, Energy and Industrial Strategy Committee** criticised them for having banked £47m in pay and perks in the years before the company’s collapse. Former ceo Peter Fankhauser told MPs that he had not yet decided whether to return some or all of his latest £750,000 bonus to help boost the dire financial situation of thousands of ex Thomas Cook employees. committee chair Rachel Reeves MP told him: *‘I hope you will go away and reflect on the huge salaries you’ve earned, salaries that probably in all the lives of some of the people who worked for you will never earn in their while careers, and think about what you can do, not just as a token, but in some way to put right the wrong that you have done*.’ In a tense exchange chairman Ms Reeves then asked him again: ‘How can he justify the bonus?’ - Fankhauser replied*: ‘I will take it back, and consider what is right, but I will not decide today’.* Fankhauser was paid £8.4m during his time at the helm, including £4.6m in bonuses, but the majority was paid in shares which he did not sell, he said, and are now worthless. Of the remainder, only one year’s cash bonus falls within the two-year claw-back limit, meaning the maximum he could be forced to return is £558,000. The same applies to former fd Michael Healy, who could be forced to give back only £465,000, a combined total of slightly more than £1m.

The MPs examined recurring failures in corporate governance, accounting, auditing and regulation. Thos Cook had been in a precarious financial position for the last decade, having to rely upon emergency loans and refinancing packages, though it secured £425m from a rights issue in 2013. Meanwhile, the bonus gravy train for directors continued. Prem Sikka, Professor of Accounting at the University of Sheffield and at the University of Essex, and influential adviser to the shadow chancellor, said: “*Its part-time non-executive directors collected between £60,000 and £106,000 in 2018. The non-executive chairman raked in £307,000. Such riches were hardly justified by the company’s performance. In 2017, the company reported a £9m profit which turned into a loss of £163m for 2018. For six months to March 31 2019, it reported a loss of nearly £1.5bn. The company was in no position to deal with a £3.1bn black hole in its finances and liquidation beckoned*.” Some 9,000 UK jobs were lost, although around 2,000 of these are being saved by the sale by the liquidator of 555 TC travel shops to **Hays Travel**. Supply chain creditors, customers and HMRC will be the biggest losers from the liquidation.

“Most controversially, Thos Cook’s accounts have been a mish-mash of the so-called *‘exceptional’* or what the company preferred to call ‘*one-off*’ costs. They reduced the 2018 operational profit by £153m (£99m, 2017). The labelling of some costs as ‘exceptional’ enabled the company to bury the bad news which made it very difficult for external parties to assess the company’s performance. *Earnings before Interest and Tax (EBIT) were a major factor in the calculation of executive bonuses and performance related pay. So the exclusion of ‘exceptional’ items from this would have inflated EBIT and performance related executive pay,”* said Prof Sikka.

“Poor accounting of ‘*goodwill*’ was a factor in the demise of **Carillion**, and of Thomas Cook as well. In accounting, goodwill is the difference between the price paid for an acquisition and its net assets. The difference may represent intangible advantages or the ability to earn superior returns. The 2018 accounts showed goodwill at £2,585m (£2,227m, 2017). Most of it arose from the 2007 merger with *MyTravel*. However, Thomas Cook had been in financial difficulties, and that did not justify the balance sheet value of goodwill. **Instead, the accounting standards issued by the Financial Reporting Council (FRC) enable companies to construct models and they can show goodwill in their balance sheets almost indefinitely,"** he warned.

"Thomas Cook did this until September 2018. After the November 2018 profit warning, Thomas Cook's interim accounts to March 31 2019 reduced the value of its goodwill by **£1,104m**. The failure to write-down worthless goodwill in earlier years inflated the company's balance sheet, over-reported its profits and enabled directors to collect higher performance related pay. There is no public information about the time that auditors spent on the job, composition of the audit team, questions asked by the auditors, managerial responses or anything else. In 2017, Monarch Airlines collapsed and the government repatriated thousands of stranded passengers. *No procedures appear to have been introduced since to ensure that the sudden demise of an airline does not lead to chaos. No regulator monitors the financial position of airlines to ensure that they have adequate capital to meet their contractual obligations, partly because **the UK lacks a central enforcer of company law.*** In a fragmented regulatory environment, the FRC is considering launching an investigation into the accounts of Thomas Cook, but its report on the audit failures at **Carillion**, which collapsed in January 2018, has yet to appear. The FRC itself is arguably culpable as its rules permit companies to engage in dubious accounting practices.

"The company had the usual collection of hand-picked non-executive directors, audit committees, remuneration committees, external auditors and sundry advisers, and none had the independence to deal with fat-cattery, risks or financial engineering. Such issues were raised by the 2007-08 banking crash, the demise of **BHS,** Carillion**, Patisserie Valerie** and others, but have not been addressed. **Thomas Cook is the familiar story of regulatory inertia & weak corporate governance.**"

*Record fines totalling £43m for misconduct and standards breaches of accounting rules were imposed by the FRC on auditors during the 2018-9 fiscal year, its first annual enforcement review revealed. The FRC nearly trebled its annual fines, from £15.5m in 2017/18 to £42.9m, though the final net fines total amounted to £32m, owing to



discounts for speedy settlement. One example concerned a company which restated its 2017 balance sheet to correct undetected errors in its accounting for **share option schemes**. The FRC explained: "The errors did not have a material impact on the income statement (and therefore on the financial performance reporting of the company). The matter raised particularly challenging technical matters and case examination & enquiry team's enquiries with the audit firm identified that the key underlying cause was insufficient technical expertise within the audit team and a lack of technical review. As part of constructive engagement, the firm provided immediate training on the technical issue to auditors within the relevant office and implemented a firm-wide training programme. The case examiner was satisfied that these steps appropriately addressed the risk of repetition" it added. The FRC, criticised by some as being asleep on the job, is being absorbed into a new regulator, the **Audit, Reporting and Governance Authority,** (**ARGA)**, with its proposed toughened up enforcement division.

**Executive Reward:**

**Malus and Claw-back** are the ineffectual means companies have to try to recover bonuses paid to senior executives who didn't deserve them. Attempts to strip them of bonuses can be challenged, sometimes successfully, in the courts. Eric Daniels, who was the ceo of **Lloyds** during the financial crisis, won a legal case requiring the bank to pay him a £1.4m bonus it had withheld.

An ex Thomas Cook ceo kept £17m in pay and bonuses, despite a bid from the doomed operator to claw the money back. Manny Fontenla-Novoa was paid the huge sum during his four-year tenure as ceo – a move that furious shareholders claimed *"rewarded failure"*. The travel boss, 65, was at the helm when the company nearly went bust in 2011. He quit following a series of profit warnings, plunging share prices and the deaths of two British children who were killed by carbon monoxide poisoning on a Thomas Cook holiday in Corfu. Thos Cook executives tried desperately to get back some of the pay and bonuses Fontenla-Novoa had received – including a £1.2m payoff - but he had covered his back with a complex employment contract. Thos

Cook's chairman Frank Meysman hit out at Fontenla-Novoa in an interview – insisting executives should lose their bonuses if a business underperforms.

What can be done? Malus and Claw-back rules *could be beefed up so they are automatically brought into play when a company fails. The burden of proof could be placed on the director to show why they should keep their bonuses.* **Far better, though, if overblown awards were not made in the first place**. "*Top pay culture in the UK is rotten,*" wrote Ruth Sunderland in the *Daily Mail*. "*This is down to cosy relationships on boards, toothless remuneration committees and consultants and head-hunters, who have a vested interest in pandering to venal executives. It harms capitalism if top managers cash in despite the demise of the companies they run.* ***If companies and shareholders won't tackle the outrage, voters might take the view that Jeremy Corbyn will."***

*Less than one fifth of total UK top ceo annual reward is their basic salary, according to a report by the **Chartered Institute of Personnel and Development** and the left leaning **High Pay Centre.** The report highlighted that employee pay expenditure is mostly salary and wages (81 percent) while salary is only 19 percent for ceos. Share-based pay is only 2.7 percent of employees' pay, but constitutes 48 percent (LTIP) and 26 percent (bonus) of average ceo reward. "*Executive pay in the FTSE 100 – is everyone getting a fair slice of the cake?*" includes statistics on FTSE100 ceo pay in 2018. Compared to 2017, both median (£3.46m) and mean (£4.7m) pay packages have dropped (by 13 and 16 percent respectively). The ratios of ceo versus median pay are **144:1** for all UK employees and **117:1** for full-time UK employees. The ratios for *mean pay* are **158:1** and **128:1.** For the first time, the report analysed how companies address fairness when setting pay. ***In 2018 only 23 companies discussed how fairness is factored into the pay process.*** The report questioned: (i) why ceos, rather than employees, should benefit from the success of their firms through higher pay and (ii) why pension contributions are much higher for ceos compared to rates for employees. Other recommendations were: > 'Total single figure' disclosure should extend to key management and disclosure of reward levels of the top one percent of earners in any organisation. > Reform of the role and make-up of remuneration committees. Committees should focus on issues linked to performance and behaviour of the ceo, including culture and how the workforce is rewarded. They should include stakeholder and employee representatives, and HR/people management professionals. > ceo pay should reflect financial and non-financial performance measures (e.g. company impact on the environment, talent, inclusion and employee well-being). > There should be simpler pay packages linked to fewer and more meaningful measures of performance, with restricted shares type awards.

**Corporate pension contributions squeezed**

Some of the UK's biggest firms have caved in to pressure from investors to curb big pension payments to top executives and close the gap with the rest of the workforce, research has found. Four out of ten FTSE 100 companies have cut pension contributions to new or existing directors this year, according to a report by global advisory firm and Centre member **Willis Towers Watson (WTW)**. Big annual pension cash contributions to executives have drawn the ire of shareholders this year, aside from multi-million pound bonuses. Stephen Hester, ceo of **RSA,** the insurer behind the *More Than* brand, received £302,000 to help him "*save for retirement*". This amounted to 30 percent of his basic salary. The WTW research, which tracks changes to executive remuneration during the agm season, showed the median pension contribution for ceos fell to 20 percent of salary this year, from 25 percent last year. Three in ten companies have reduced pension payments for new executive recruits, more than halving contributions to 12 percent of salary, from 25 percent. A dozen companies, including HSBC and **Lloyds Banking Group**, reduced pension payouts for executives, up from four in 2018. Shareholder pressure forced **HSBC** to reduce pension contributions for its executives from 30 percent to ten percent of salary in February, shaving nearly £250,000 off John Flint's pay package, before the former ceo was pushed out in August. Other staff receive between nine and 16 percent, said the bank. Lloyds ceo, António Horta-Osório, had his pension payment reduced to £419,000, or 33 percent of salary, this year, from £573,000, or 46 percent of salary. This compares to about eight to 13 percent for the rest of the workforce. For employees at FTSE 100 firms, employer core contributions rose to 6.5 percent this year from 5.5 percent in 2018, according to separate WTW figures. They refer to defined contribution schemes, where employer and employee contributions are invested and the proceeds are used to buy a pension at retirement. The standard employer contribution under auto enrolment increased to three percent in April. Jessica Norton of WTW said: "Increasing scrutiny by the governance community on pensions marks the latest stage in the ongoing debate surrounding the appropriateness of executive pay that has been simmering since the financial crisis. In response to pressure from shareholders and regulators, a significant number of companies have cut payments to executive pension pots as part of a wider strategy that is aimed at moving towards better alignment with the workforce." In other findings, FTSE 100 ceos received a median salary increase of two percent to £876,000 this year, with one in four getting no pay rise. They typically enjoy a car allowance worth

£20,000. The median annual bonus payout fell to 70 percent from 76 percent of the maximum possible payout, the research found. Top company directors received a median reward package of £3.59m this year – down to the levels of 2015 and 2016.

### Pay troughing at state agencies

The **Department for Transport** reviewed executive pay and reward packages at delivery bodies including Highways England, Network Rail and HS2 in the wake of the debacle surrounding the delayed and over-budget *Crossrail* project. The **Public Accounts Committee** demanded answers on the department's oversight of performance-related pay after it emerged that *senior managers at the trans-capital rail scheme continued to receive bonuses as the project veered off-track.* Crossrail services were due to begin running through central London tunnels last year, but there is still no confirmed start date for the line's proper opening. Its cost has now climbed £2.8bn above its original budget to £17.6bn, with the expectation of further increases to come. Despite the issues with the project – trailed for years as being "on time and on budget" - former ceo Andrew Wolstenholme was paid a bonus of £481,000 for his performance in 2015-16 and £160,000 for the following year. Although it is a co-sponsor of the Crossrail project, DfT said Crossrail Ltd was wholly owned by the capital's **Transport for London** body, putting its bonus arrangements beyond departmental reach. However just-published Treasury minutes have confirmed the DfT is reviewing pay-and-reward structures at the bodies it is responsible for. "The department will write to the committee setting out its findings about the effectiveness of the senior pay frameworks within Highways England, HS2 Ltd and Network Rail and their redundancy arrangements," the minutes record. "This will include: setting out how central government guidance on pay and reward has been incorporated into delegations for the bodies; how the bodies attract, retain and develop the expertise they require; the relationship between performance and reward; and frameworks and redundancy arrangements."

*DfT dominates the Whitehall league for civil service pay because leaders at the likes of Network Rail, HS2, and the **Civil Aviation Authority** can earn private sector rates of pay, according to an **Institute for Government** crunch of official high -earners data. In demanding the Crossrail-inspired review earlier this year, the PAC referred to HS2's 2016 failure to abide by DfT instructions on redundancy payments that saw dozens of staff awarded cap-busting packages that cost £1.7m more than permitted. HS2's ceo at the time was Simon Kirby, who was the UK's highest-paid civil servant who earned £750,000 a year. Network Rail ceo Andrew Haines was appointed on a lower salary of £588,000 when he moved from the CAA last year. However his remuneration package is believed to include a performance bonus worth up to nine percent of gross salary. The DfT said it would use input from the different companies' remuneration committees to set out *"what measures have been taken to align pay and reward with programme delivery"* and individual performance. "The department is working with the remuneration committees of HE, HS2 Ltd and NR and with ministers to agree common principles for senior executive remuneration, which will help to ensure greater parity in the way remuneration committees hold executives to account for their performance," it said. DfT added that it was working with Highways England and Network Rail to *"amend their existing performance-related pay systems to improve the alignment between company performance and individual performance." Apparently.* ***HS2 does not yet have a performance-related pay system,*** as the DfT said it would work with the company "to design and introduce a PRP system that does this amongst its workforce." It added: "These systems will continue to be linked to delivery objectives, milestones and key performance indicators for programme and project delivery, and the remuneration committees for these delivery bodies will be expected to provide justification to ministers for PRP awards within their organisations." DfT is expected to report on the issues by the end of the year. Last month the government revealed HS2 is now expected to exceed its budget by more than the current total cost estimate for Crossrail, if it goes ahead.

COMPANIES

*****Paris based **Amundi** launched its 2019 Esop to enable its employees to be more closely linked to the development of the business, the creation of economic value and to increase their feelings of belonging. The impact of the operation on net earnings per share should be negligible. Up to one million new Amundi shares are to be issued, i.e. less than 0.5 percent of its share capital. The subscription price is set at **€42.43** per share, which was the average of the Amundi opening share price over 20 recent trading days, less a ***30 percent discount***, in accordance with new rules set out in the French PACTE law (*Plan d'Action pour la Croissance et la Transformation des Entreprises*, or *Action Plan for growth and corporate transformation*). The Amundi employee shares will be listed on Euronext on November 15. Following issue of the new shares, assuming the offer is fully subscribed**,** employees will hold 0.8 percent of Amundi's share capital, compared to 0.3 percent currently. Amundi has share capital of €504m. Esop 2019 is reserved for employees *and* retired employees of Amundi Group companies, who are members of the Amundi SEU

Group Savings Plan (PEG) or Amundi's International Group Savings Plan (PEGI). The new Esop shares, with a nominal value of €2.50 each, will be available to employees in France and Amundi Group subsidiaries in various countries, including the **UK** and the US.

***Bob Dudley is stepping down from **BP** after receiving *£100m* in cumulative reward for his work restoring the oil giant's reputation in the wake of the *Deepwater Horizon* disaster. Mr Dudley replaced Tony Hayward as ceo in 2010 following the Gulf of Mexico oil spill that killed 11 people and unleashed environmental havoc. The catastrophe cost BP more than ***£52bn*** in compensation, penalties and clean-up costs. Dudley, 64, battled for ten years to save the reputation of the FTSE 100 oil major and to prepare it for the rise of lower carbon alternatives to oil and gas. He had been paid a total of £97m by the end of 2018 and could earn a further £10m this year. He amassed 8.3m shares, currently worth £40m, in bonuses that he is yet to receive as they are linked to BP's performance. BP said he could only receive all the shares if every single target was hit. Dudley became the third FTSE 100 boss to step down recently, following the resignations of Dave Lewis at **Tesco** and Alison Cooper at **Imperial Brands**. Dudley will be succeeded by an insider, ***Bernard Looney***, who will take the helm at the £100bn company following its full-year results in February. Mr Looney will receive total annual reward of up to £11m, including a basic salary of £1.3m, bonus, share awards and a cash allowance of 15 percent of salary in lieu of pension. Looney has led BP's upstream oil and gas exploration, development and production unit since 2016. His workforce comprises 17,000 people in 30 countries, producing 2.6m barrels equivalent of oil and gas daily. The new kingpin, whose pastimes include following tractor-related accounts on *Instagram*, joined the company in 1991 as an engineer. BP chairman, Helge Lund, said that the transition towards lower carbon energy sources made it a logical time for a change at the oil major. Dudley agreed to forego the final six months' notice pay to which he is entitled. He has waived any annual bonus he would receive for his work in 2020. At BP's agm in 2016, investors voted down a 20 percent pay increase for Mr Dudley.

***Services company **Bouygues** launched a leveraged Esop, which involves a capital increase of up to **€150m** (inclusive of share premium), reserved for employees of French companies in the Group, via a dedicated mutual fund (FCPE), the units in which are subject to a five year lock-up, except where early release terms apply. A maximum six million new Bouygues shares will be issued at a subscription price of €24.87 each, offering employee participants a **30 percent discount** to the recent market price. The FCPE will exercise the voting rights attached to the newly issued shares. The subscription period runs from November 15 until December 2 and the new Bouygues shares will qualify for dividend from January 1. Bouygues said that the plan gave employees a stake in the group's development and performance over the long term and had demonstrated yet again its pro-active approach to employee share ownership, a core component of the group's culture and values. Bouygues has three sectors of activity: construction, with Bouygues Construction, Bouygues Immobilier (property development) and Colas (roads) and telecoms, with Bouygues Telecom and Media, with TF1.

***Capgemini** offered a new Esop to 98 percent of its employees as part of the technology group's policy to associate all employees with its development and performance. Employee shareholdings resulting from previous Esops cumulatively amount to **six percent** of Capgemini's share capital. This sixth Esop will be implemented through a capital increase reserved for Capgemini employees of a maximum 2,750,000 shares (i.e. 1.64 percent of its share capital), with settlement no later than December 18. The directors decide on the final terms on November 7, notably the subscription price of the newly-issued shares, which will be **87.5** percent of the reference price. As in 2018, the directors of Capgemini authorised a share buyback envelope, which could be used within the next 12 months to neutralise the dilutive effect of the Esop share issue. The subscription/withdrawal period will be from November 12 – 14. These shares will carry right to dividends distributed, back-dated to January 1 2019. The shares will either be subscribed to directly or through an FCPE *(Fonds Commun de Placement d'Entreprise)*, in accordance with applicable regulatory and/or tax legislation in the participants' countries of residence. Employees can subscribe to Capgemini shares under a formula called *leveraged and guaranteed*, allowing them to benefit from a guarantee on their investment. In certain countries, employees will be allocated Stock Appreciation Rights (SARs), with amounts indexed in accordance with a formula similar to the one offered under the leveraged formula. Employee Esop subscribers must hold their new shares for a *five-year period*, except in the event of an authorised early exit. When employee shares are purchased and then held, via the intermediary of an FCPE, voting rights attached to these shares will be exercised by the relevant FCPE supervisory board. However, where shares are subscribed to directly by employees, voting rights will be exercised by employees. Capgemini is a leader in consulting, technology services and digital transformation,

***Chapel Down** announced that after the exercise of share options under the company's employee share option scheme, application was made for 10,000 new ords of a nominal five pence each to be admitted to the NEX Exchange, which will rank equal to existing ords. Following Admission of the new ords, the company will have 144.17m ords in issue with each share carrying the right to one vote.

*Gaming software company **GAN,** which is expanding its business in the US, has granted share options worth £1.8m to its ceo Dermot Smurfit and several other directors. Smurfit has been given options over 900,000 GAN shares. Chairman Seamus McGill and non-executive directors Michael Smurfit Jr and David Goldberg were each granted options over 400,000 shares. *GAN said the options were granted under an employee share option scheme and "as part of an award to a significant number of employees with certain service lengths"*. Non-executive directors are not usually awarded share options, however, as they are not employees. The options vest over three years and have an exercise price of 74p. GAN shares closed at 84p recently. *Esop-friendly **Imagination Technologies**, the British microchip company bought by a Beijing-backed private equity group two years ago, has said it would choose to float in China or New York, rather than re-listing its shares in London. The Hertfordshire-based company, best known for designing the iPhone's graphics units until it was dropped by Apple in 2017 and Pure Radio, was one of the UK's most prominent listed tech companies until it was bought by Canyon Bridge Partners for £550m. Imagination is seeking to engineer a turnaround under the new owners, who are funded partly by the Chinese government, with a view to selling or floating the company once it has reversed losses and improved revenues.

*Departing **John Lewis** chairman, Sir Charlie Mayfield, unveiled £100m of cost cuts and 75 job losses in senior management as he promised to bring the Partnership's department stores closer to its **Waitrose** supermarket arm. The overhaul saw Waitrose md Rob Collins quit the troubled business, which styles itself as being employee owned, 26 years after joining as a graduate trainee. His role is being cut as control is centralised, with the two sides of the operation run as one, instead of having separate boards. This will be no easy task: a former insider quipped "If John Lewis is never knowingly undersold, Waitrose is never knowingly oversold."

Sir Charlie said the JLP faced a battle to fix its finances as the high street was gripped by crisis and he hinted there could be more cuts in the months ahead: "*The returns we are able to make from doing what we do so well are actually going down over time."* The Partnership is sandbagged with £2.4bn debt and is unable to raise extra cash from the markets because it is owned by staff. The cutbacks come as Sharon White, ceo of media regulator **Ofcom**, prepares to take over in March from Sir Charlie, who has been in the top job since 2007.

***Sensyne Health** apologised to shareholders for not consulting them about boardroom reward and withdrew its remuneration policy, which could have handed ceo Paul Drayson up to £1.5m in the year to April. Lord Drayson, who served as defence and then science minister under Tony Blair and Gordon Brown, will receive only nominal pay until then. Sensyne's biggest institutional shareholders will have to sign off on any bonus for the current financial year. Drayson was paid almost £1.3m last year, including an £850,000 bonus for the completion of the company's flotation on AIM in August last year, which raised about £60m. The healthcare technology company's cfo Lorimer Headley was handed a bonus of £200,000 following the listing. The bonuses for last year are not under review. Sensyne's acting chairman Annalisa Jenkins promised to consult shareholders on director reward but insisted the ceo was still the right man for the job. She said: "Sensyne Health's shareholders and the board are unanimous that Lord Drayson … is essential to the future of the company."

***Smith & Nephew** ceo, Namal Nawana, stepped down after only 18 months in the job during a row over his annual reward. The company, which makes artificial knee and hip joints as well as wound dressings, said that Nawana stood down as ceo on October 31 "by mutual agreement" to pursue opportunities outside the UK. He will be succeeded by Roland Diggelmann, a former **Roche** executive, who has been on Smith & Nephew's board as a non-executive director since March 2018. Nawana will stay with the company until the end of December to "provide advice and assistance." Nawana, who is based in the US, is leaving because his demands for higher pay, in line with the packages awarded by US medical device-makers, could not be met under UK corporate governance standards. *The board reportedly discussed relocating the company to the US over the summer*. Diggelmann ran Roche Diagnostics, a subsidiary of the Swiss healthcare firm Roche for six years until 2018 and previously worked at **Sulzer Orthopedics** and **Zimmer**. Diggelmann, a Swiss national, will be based at Smith & Nephew's Swiss site, which will move to Zug next year. He will be paid an annual salary of £1.08m, as part of a pay package of up to £5.5m including bonuses, dependent on performance. This includes a pension cash contribution of 12 percent of salary. His predecessor joined on a similar annual salary of £1.1m but received bigger pension cash contributions, equivalent to 21.5 percent of salary, as well as cash and share bonuses. He could receive a maximum package of £6m this year. Roberto Quarta, Smith & Nephew's chairman, said Nawana had "substantially transformed the business with a new strategy, purpose and culture, and renewed commitment to innovation, returning it to an improved growth trajectory".

*On October 14, Construction and motorways concessions giant **Vinci** bought 178,000 of its own shares at €97 each – a total spend of €17.24m - in order to cover obligations to its pension savings plan and its company-wide Esop.

## WORLD NEWSPAD

***USA: Cannabis investor companies**

Seattle US based occasional Centre speaker **Fred Whittlesey,** who runs the **Compensation Venture Group,** writes the Cannabis Compensation Consultant blog. "This all started because I became an active investor in the cannabis industry and have known for a long time that scrutinising executive compensation practices provides a good insight into potential investment returns," said Fred. With a couple of exceptions, the public cannabis companies in North America are listed in Canada, CSE or TSX. This is because in the US, cannabis is still listed as a schedule one drug with the federal government – in the same category as heroin and meth – so financial institutions cannot do business with them, although legislation changing that was approved in the House of Representatives. However, Senate approval is more doubtful and Mitch McConnell is opposed to legalisation." Fred, who lives in Washington State, where recreational cannabis consumption is legal, is discussing with Centre chair Malcolm Hurlston the formation of a global cannabis group, tied into social justice issues including employee ownership. His e-address is: fred@compensationventuregroup.com

Malcolm Hurlston said: "NICI looks unattractive outside US currently as some offers are only available to US investors. There is a case for an international body."

***Australia:** Just as the dust was settling on the latest furore over out-of-control ceo reward, a mid-tier lender has taken largesse to new levels, by Australian standards. **Latitude Financial Services** boss Ahmed Fahour could make between A$40m to A$50m (£1 sterling = A$1.89) from the company's planned float. That's more than 500 times the average wage, at a time when wages and jobs growth, are almost non-existent. Then it was the A$24m salary of **Qantas** boss, Alan Joyce, that hit the headlines. Recently departed **Macquarie Group** chief Nicholas Moore earned a similar amount last year, with **Treasury Wine Estates'** Michael Clarke the third highest-paid boss, on A$19m. In Australia, bonuses are not really bonuses, but an ***entitlement*** instead, as *only one ceo in the top 100 companies did not get a bonus last year*. "*Both Ahmed Fahour and Latitude don't seem to have read the tea leaves about the times*," shareholder activist, Stephen Mayne, told the ABC. "It's as if the Hayne royal commission didn't happen, to come up with an excessive salary package like this in a big financial services float." Among the critics of the huge payouts to ceos is the Reserve Bank governor Philip Lowe who gets just under A$1m and has refused to join the bonus club. "*I can't understand the mindset that says, we have to pay you A$5m, or A$10m, or even A$20m, so that you deliver value for the company,*" Dr Lowe told an audience in Armidale in New South Wales. But that's a mindset that many investors have and many people in the business community have. It's not a mindset that I share."

If all goes to plan at Latitude, Mr Fahour will receive a bonus of A$22.5m. He'll get other shares worth A$28m, which he'll have to buy, but he'll be helped by an interest-free loan of A$17.5m. And then there's his salary, of A$4.9m. Mr Mayne thinks such over-the-top payments could come at a cost. "*There may be some investors who say 'if the ceos already got A$28m worth of shares, why should he get a A$22m share bonus?'*" he said. "*This is a float I am going to avoid. It's over the top.*"

Companies keep lavishing astronomical amounts on ceos, despite repeated studies which show huge pay doesn't equal huge performance. One of those studies, by **Morgan Stanley Capital International**, looked at hundreds of the biggest companies in the US over more than a decade. *It found those with the lowest-paid bosses outperformed those with the highest pay by around 40 percent. Which raises the question: how did we get to this salary situation which is so out of touch with the real world?* Carl Rhodes, deputy dean of the business school at the **University of Technology Sydney,** has been studying the issue for many years. "In years gone by when ceos weren't paid that much, was is that corporate performance was poorer then than it is now?" he asked. "Of course not. This is part of a historical trend that is self-benefiting to a particular executive class of people." Professor Rhodes traced the explosion of executive pay back to free market and light regulation believers Ronald Reagan and Margaret Thatcher. "We saw a huge wave of corporatisation of organisations that were organised differently, such as co-ops and mutuals and so forth, and the privatisation of a lot of public institutions, so the corporation came to be seen as the prime mover in the economy," he explained. With that came a big change in the way the role of the ceo was viewed. Ceo pay in the US rose by almost 900 percent between 1978 and 2012, a trend that Australia followed. "You've seen the growth of this type of heroisation of ceos, which you never saw before," said Prof Rhodes.

*The best paid civil servant in Australia earns more than A$2.5m in pay and bonuses, while the salaries of wealth fund managers have outstripped the Reserve Bank boss, the government has revealed. **Australia Post** boss Christine Holgate took home A$2.565m in 2018-19, up from A$1.646m last year. The increase was off the back of A$300,000 in extra bonuses and A$224,500 in other long-term benefits.

*Executive pay is a contentious point of discussion for shareholders, but it's usually less of an issue for the directors of ASX small caps. There are exceptions to the rule, said the bulletin *Stockhead*. Companies' annual reports and agms disclose executive pay and shareholders sign off — if they're happy. Remuneration is usually just base pay, bonuses as well as equity grants (in stock or options). Back in July, the **Australian Prudential Regulation Authority (APRA)** put out a discussion paper which proposed: >Taking account of non-financial performance metrics by having financial performance compromising no more than 50 percent of performance criteria; >Introducing minimum holding periods for variable remuneration and >Boards overseeing remuneration for all employees and regularly reviewing them. APRA's John Lonsdale said over-emphasis on short-term financial performance was a regular occurrence in cases of misconduct. "This has contributed to a series of damaging incidents that have undermined trust in both individual institutions and the financial industry more broadly," he said. "Crucially from APRA's perspective, these incidents have damaged not only institutions' reputations, but also their financial positions. Limiting the influence of financial performance metrics in determining variable remuneration will encourage executives to put greater focus on non-financial risks, such as culture and governance. "APRA will not be determining how much employees get paid. Rather, we want to empower boards to more effectively incentivise behaviour that supports the long-term interests of their entities. By reducing the risk of misconduct, we hope to see better outcomes for customers and higher returns for shareholders in the long-term.".

***Finnish** private equity investor Vaaka Partners became the majority shareholder in Helsinki headquartered ship design and engineering specialist **Foreship**. Employing more than 100 naval architects and marine engineers, Foreship is a market leader in cruise ship design, refits and ship life-cycle projects. Its range of engineering solutions include project coordination and management, classification design and Foreship has a good global footprint and excellent references from some of the biggest players in the cruise line and new building businesses," said ceo Lauri Haavisto. "The new ownership arrangement with Vaaka Partners is an excellent opportunity to maintain Foreship as Foreship, while benefiting from the skills and resources of an established private equity investor. We will be better able to expand our market share globally, serve all our customers more effectively and strengthen our position in the rapidly growing cruise ship refurbishment and upgrade sector." Markus Aarnio, Marcus Höglund and Mattias Jörgensen will retain their positions in Foreship after the transaction, and employee share ownership of Foreship will stay at 40 percent.

***Finnish** based **Gofore** issued 22,844 new shares, as part of the group's employee share savings plan, *CrewShare*. Participants can save a proportion of their salaries and use the savings for the acquisition of the Gofore shares at a discounted price. The employees subscribed for the shares at a price of **€7.03** each, based on the trade volume weighted average share price on Nasdaq Helsinki Ltd during August 2019 with a ***ten*** percent discount. Trading of the new shares at the *Nasdaq* First North Growth Market Finland market began on September 27. Following the registration of the new shares, the total number of Gofore shares is 14,012,802. The share subscription price will be credited in full to the company's reserve for invested unrestricted equity. **Further enquiries:** ceo Timur Kärki, Gofore Tel.+358 40 828 5886 timur.karki@gofore.com

***US: Purdue Pharma**'s plan to pay out **$38m** in executive bonuses while the OxyContin maker goes through ***bankruptcy*** drew swift rebuke from two dozen US state prosecutors. The company made its bonus request last month on the same day that it filed for Chapter 11 bankruptcy protection in New York. Despite facing massive liability exposure from 2,600 lawsuits over the nation's opioid crisis, Purdue has said it needs to make sign-on incentive and bonus payments to keep employees and maintain operations. Noting that turnover is already high, the company says it is trying to balance severance packages for employees heading for the exit. New York Attorney General Laetitia James and other prosecutors made their objections to Purdue's plan known: "As Purdue Pharma argues in court that they cannot afford to pay creditors what they owe, the company wants to hand out $38m in bonuses to their top executives," Ms James observed. Purdue is based in Stamford, Connecticut, where state Attorney General William Tong echoed James' sentiment. "*We need to do all that we can to hold Purdue Pharma, and the manufacturers and distributors of these opioid drugs accountable for creating this crisis and secure the resources needed to provide long-term prevention and treatment and fund addiction science,*" Tong wrote. Dave Yost, attorney general for the state of Ohio, which had the second-highest rate of drug overdose deaths in 2017 said: "I will fight this to the gates of Hell — which, thanks to Purdue & its ilk, are not far from southern Ohio," Yost wrote.

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