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# it's our business

newspad of the Employee Share Ownership Centre

## UK's EU employee equity plans in Brexit miasma

The prospect of UK-based multinationals having to launch more costly and bureaucratic European equity plans post Brexit rose after increased speculation that the UK may have to leave the single market.

A row blew up in Downing Street after Chancellor of the Exchequer Philip Hammond let slip that losing the UK's single market status – vis-a-vis the EU – could be the price the UK would have to pay for regaining control over its borders for immigration purposes.

If the speculation proves correct, UK businesses which plan to offer share scheme benefits to group employees in the EU would be unable to rely on relevant exemptions in the EU's Prospectus Directive. This could make it more costly for UK companies to operate EU-wide employee share schemes because it would be more complex to ensure compliance with the Directive.

The so-called 'passporting' issue will be explored in depth at the Centre's inaugural **British Isles symposium** on **Brexit** and **Say on Pay**, on **Wednesday November 23** & **Thursday November 24**. Legal giant **White & Case** will host the event at its HQ in Old Broad Street, EC2. Already, the symposium has attracted co-sponsorship from trustees **Bedell Group** and **Estera (**formerly Appleby fiduciaries) and plan administrators **Equatex.** Other sponsorship opportunities, such as the delegate handbook, are available. More than 30 people to date have registered to attend. Passporting rights are considered by many to be vital to London's position as a financial hub. They allow banks and others to serve clients across Europe without the need for licences in individual countries. The UK's 'get-out' would be to implement similar rules for mutual recognition of prospectuses between the UK and EU member states, but that option would require a specific negotiated agreement. Under this route, the UK might continue to have legislation that replicated existing exemptions. Alternatively, the UK could enact a blanket employee share plan exemption from prospectus requirements, but for UK-listed companies which are not listed on another EU exchange, this would not avoid the potential need for a prospectus in other EU member states (unless the EU specifically allowed for this).

German lawyers **Heuking Kühn Lüer Wojtek** warned: "Brexit would have consequences for the cross-border offering and approval of securities prospectuses. At present, a securities prospectus approved by the responsible authority in the member state of origin, can be used in all EU/EEA countries for stock-market admissions or public offers of the respective security without an additional approval procedure. This possibility would no longer apply following a Brexit. Prospectuses approved in the UK would no longer automatically be valid in the EU. An additional approval procedure could be required for stock-market admissions or public offers of the respective security, as long as no other ruling has been made on equal-value recognition," said Michael Neises and Dr Christoph Gringel.

Centre member **Linklaters** doubts whether MiFID II (Markets in Financial Instruments Directive), which will apply in the UK from January 1 2018, would prove an effective substitute for passporting, should

***From the Chairman***

*We have heard fine words from the Prime minister (but before she took office) and from the business secretary too, this week before the assembled ranks at the Albert Hall convention of the Institute of Directors. I am not sure if the phoney war is the right analogy but now we await the outbreak of action. The action should include promotion of the CSOP and measures to build on the surprise success of the EOT. Better governance is to be welcomed but our wages of capital - as proven in the case of Royal Mail - are uniquely suited to reaching Theresa May's target audience. Newspad will be asking the junior ministers closer to the action how they intend to put high level ideas into plastic fivers, both for the average worker and for small business owners.*

***Malcolm Hurlston CBE***

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the UK lose its rights to the latter, post Brexit: “It is possible that the UK may decide to keep the MiFID II regime largely intact after it withdraws from the EU. Some of the rules are already in place, and many of the changes have been made at the UK’s behest. This would potentially make it easier for UK firms to access the EU market through the third-country provisions of MiFID II and MiFIR (the regulation), on the basis of equivalence,” said the law firm.

“It’s worth remembering, however, that MiFIR only gives third-country firms a potential passport for professional clients and eligible counter-parties. The ability to do business with retail clients will still depend on the law of individual member states, unless it is carried out through reverse solicitation,” warned Linklaters. “Furthermore, an equivalence decision by the Commission takes time, though it could be undertaken in parallel with the withdrawal negotiations. Also, if one of the motivations for Brexit was to escape regulation from Brussels, there may be limited appetite in the government to comply with a rulebook over which the UK will have little control.”

Lord Hill, the man who, as European Commissioner for Financial Services, would have overseen the evolution of a neutral MiFID II and III, resigned after the Brexit vote.

However, ratings agency **Moody’s** claimed in a report that while the loss of passporting rights would increase costs for banks, this would be manageable. This was because incoming EU financial services laws would recognise that some non-EU countries’ rules and regulations were as tough as its own, it said. “In particular, we consider that the third-country equivalence provisions contained within the incoming MiFID II EU directive, which comes into force in 2018, may provide firms with an alternative means of accessing the single market,” claimed Simon Ainsworth, senior vp at Moody’s.

Share dealing and data protection regulations concerning employee shareholders may well be impacted significantly by Brexit too.

More than 5,000 financial services firms are at risk if the UK leaves the single market after Brexit, a senior Tory MP warned. Andrew Tyrie, chairman of the **Treasury Select Committee**, revealed the scale of the threat if the City loses the right to provide services (via passporting) across the 27 remaining members of the EU. A total of 5,476 UK-registered firms hold at least one passport to do business in another member state of the EU or the wider European Economic Area (EEA).

A further 8,008 firms, registered in other EU or European Economic Area (EEA) member states, hold passports to do business in the UK, the **Financial Conduct Authority (FCA)** revealed. It was the first time that the number of companies that will be hit by a “hard Brexit” option – favoured by some leading Tory Eurosceptics – had been set out.

Mr Tyrie said: “These figures give us an initial idea of the effects of losing full access to the single market in financial services. The business put at risk could be significant. None of the current off-the-shelf arrangements can preserve existing passporting arrangements, while giving the UK the influence and control it needs over financial services regulation as it develops. This issue needs to be right at the top of the in-trays of the chancellor, the governor of the Bank of England, and the UK’s lead negotiators.” The task of preserving passporting rights would be “one of the most challenging aspects of the negotiations”, Mr Tyrie warned.

Few noticed the odd use of words by Mr Hammond after he had met British businesses leaders to hear their views ahead of his first Autumn Statement on **November 23.** This roundtable provided an opportunity for discussions with them about Brexit. What Hammond said in his statement on September 21 was: “My message to businesses is clear: In negotiations to leave the EU, we will work hard to get the best deal for Britain and that includes ensuring that British companies can continue to trade *with* the single market in goods and services.” The **Institute for Fiscal Studies (IFS)** retorted: “Any country in the World Trade Organisation – from Afghanistan to Zimbabwe – has access to the EU as an export destination. Single market ‘membership’ by contrast involves elimination of barriers to trade in a way that no existing trade deal, customs union or free trade area achieves.” Retaining access to the single market without being a member would be ‘virtually meaningless,’ the IFS said, adding that the benefits to growth, living standards and trade outweighed the cost of single market membership. It warned that leaving the single market could leave the UK £70bn worse off due to slower growth. Remaining in the single market could deliver a four percent boost in national income to the British economy, equivalent to two years worth of growth, the think-tank said.

*__Blackrock__ president Rob Kapito said that companies with offices in the UK are already looking at possibly moving staff abroad. “I don’t think there’s any firm, any good firm, that has not already started looking at real estate in different areas outside the UK in case they have to move larger operations,” he told BBC’s *Today* programme. ”There’s no-one that doesn’t have people looking at tax implications, investment implications, manufacturing implications, so being one of the largest investors in the globe, we’re very concerned about the future economics to a lot of corporations and how it’ll affect them.”

*The insurance market **Lloyd’s of London** is working on contingency plans to ensure it can trade across Europe when the UK leaves the EU. Ceo Inga Beale told the BBC that Lloyd’s may set up a subsidiary or branches in mainland Europe. She estimates that four percent of revenues could be lost after Brexit because Lloyd’s would lose its licence – or passporting – rights to operate across the EU. The fallout from Brexit “is a major issue for us to deal with”, she said. “Some people may end up doing their jobs in other parts of Europe, rather than in London.” Lloyd’s, one of Britain’s oldest institutions, is the world's leading insurance and reinsurance market and houses around 90 syndicates. Continental Europe accounts for about 11 percent of gross premiums written by the London market.

*Colm Kelleher, president of US bank **Morgan Stanley**, warned too that London's financial services will be hit by Brexit. "I do believe that the City will suffer as a result of Brexit. The issue is how much," he told Dominic O'Connell. "There is a lot of concern in the financial community. The unintended consequences of Brexit will be significant for everyone across the UK.

"I am convinced that London will retain its reputation and prestige as a global financial services centre, but clearly some size of our businesses will have to be moved out of London and into Europe with the absence of any passporting agreement," Kelleher said. "It's very hard to ascertain what that means at the moment. I do think generally though that capital markets in Europe will shrink as a result of this. It is that uncertainty which is causing problems," he added. "You will see a slowdown in investment into the UK because people and corporations like certainty before they invest. So the sooner we get some clarity on where we're heading the better."

UK-based banks would lose the automatic right to trade in EU states if the UK left the single market, Jens Weidmann, the head of **Germany's Central Bank** has said. A hard Brexit would strip banks of valuable passporting rights that give unfettered access to the bloc. This would force some to relocate from London, he added. Mr Weidmann told *The Guardian* that passporting rights were "tied to the single market and would automatically cease to apply if Great Britain is no longer at least part of the European Economic Area (EEA)". Were that to happen, he said several businesses would reconsider relocating their HQs. UK companies would lose these rights if it did not remain part of at least the EEA (which includes EU countries and Iceland, Liechtenstein and Norway). As a significant financial centre and the seat of important regulatory and supervisory bodies, Frankfurt is attractive and will welcome newcomers. But I don't expect a mass exodus from London to Frankfurt," he added.

Many big US and Asian banks set up operations in London because passporting allows them use the City as a base from which to sell their services into the rest of Europe.

The impressive line-up of employee share scheme industry experts who will deliver topic presentations at the Centre's symposium on November 23 & 24 includes:

**Nicholas Greenacre** of **White & Case**; **Stuart Bailey** of **Equatex UK**; **Catherine Gannon** of **Gannons**; **Graham Ward-Thompson** of **Howells Associates**; **Sara Cohen** of **Lewis Silkin**; **Juliette Graham** of **Linklaters**; **Liz Hunter** of **Mazars**; **Amanda Flint** of **Mercer**; **Stephen Woodhouse** of **Pett Franklin**; **Lynette Jacobs** of **Pinsent Masons**; **Jeremy Mindell** of **Primondell**.

Centre chairman **Malcolm Hurlston** will welcome delegates and introduce the symposium, setting out some of the main themes: bankers' bonuses, Say on Pay, how to realign director remuneration, the Market Abuse Regulation, the tax consequences of Brexit, latest trends in executive reward, trustee issues, corporate governance and the value of behavioural economics in developing effective employee share schemes.

Marquee speakers will be **Lyndon Trott, deputy chief minister of Guernsey, Sarah Wilson**, ceo of the proxy voting agency, **Manifest**, who will address executive reward reform. She will ask: *Where's the workforce in corporate governance?* and **Peter Parry** of the **UK Shareholders Association**.

Just two speaker roles remain open at this event – e.g. to any member who can present a client Eso plan case history, or update delegates on developments in the plan administration sector.

We will devote a segment of the programme to the future of EBTs and Eso in the Crown Dependencies. Speaker slots which fit the programme are excellent value – just **£250** + vat per person, as compared to **£395** + vat (early-bird price) for practitioner delegate places. Please contact Centre international director **Fred Hackworth** at fhackworth@esopcentre.com asap if you would like to participate. You can review the draft programme at: http://tinyurl.com/zerdyke. **To register for this event**, please send an email to britishisles@esopcentre.com giving the name(s) of your delegates.

# MORE EVENTS

**Guernsey shares schemes and trustees: October 7**

There's still time for you to register for the annual Guernsey share schemes and trustees conference, organised jointly by the Esop Centre and **STEP Guernsey**. This event will be held at the St Pierre Park Hotel in St Peter Port on the morning of **Friday October 7**.

**Deputy Peter Ferbrache**, Guernsey States president of the economic development committee, will deliver the keynote speech. In addition, delegates will hear from Martin Popplewell of **Deloitte**; Stephen Woodhouse of **Pett Franklin**; Juliet Halfhead of **Deloitte**; Alison MacKrill of **Carey Olsen** and **STEP Guernsey**; David Craddock of **David Craddock Consultancy Services**, and Elaine Graham of **Zedra**.

Centre chairman Malcolm Hurlston CBE will kick off the event with a review of the new UK government and the opportunities presented by the Employee Ownership Trust. The other presentations will look at the Common Reporting Standard, tax planning, the new rules for outstanding EBT loans, together with the traditional legal update for trustees. A panel discussion, led by Alison MacKrill and Elaine Graham, will examine why the Channel Islands are still the jurisdictions of choice to run EBTs.

Tickets for Centre/STEP members cost **£350**, non-members **£450**. To register, please email events@esopcentre.com or call 020 7239 4971.

Centre chairman **Malcolm Hurlston, CBE**, said; "Whatever your views on Brexit, Theresa May's accession to the premiership has the potential to usher in a new golden age for employee ownership across the British Isles. I will kick off this conference by filling out this theme and pointing to opportunities for trustees here of the Employee Ownership Trust, introduced in the 2014 Finance Act.

"The FATCA intergovernmental agreement with the United States has been in force for just over a year now. With the Common Reporting Standard due to commence in Guernsey in 2017, Martin Popplewell will guide us through what this means for employee share schemes.

"David Craddock will then provide an overview of the share valuation process, before our trustee panel – with Alison MacKrill and Elaine Graham – will lead a discussion on why the Channel Islands are still popular for Employee Benefit Trusts (EBTs) despite the vilification of all things 'offshore' by the narrow minded UK political class and commentariat.

"Following the break, we turn to disguised remuneration. Stephen Woodhouse will look at how attitudes to tax avoidance have changed and how this affects the design of share plans and employee trusts. Juliet Halfhead will examine the new rules introduced following HMRC's attack on outstanding loans from EBTs in the budget earlier this year.

"Alison MacKrill will then take us through a review of recent legal decisions in the Channel Islands concerning trusts, before we hear from our keynote speaker, Deputy Peter Ferbrache, who returned to the States of Guernsey in April's general election and was elected President of the Committee for Economic Development shortly thereafter. In this post he has a wide remit to deliver economic prosperity in Guernsey and we will hear some of the ways he intends to achieve this.

"Next month we will be holding our inaugural British Isles conference in London. The keynote speaker will be the Chairman of Guernsey Finance. The event will bring together leading trustees from Guernsey and Jersey together with employee equity experts across the UK. I hope many of you will be there representing the interests of Channel Island trustees as we discuss the implications of Brexit and shareholder democracy on the whole of the British Isles."

**Esop Centre Awards Dinner: November 22**

The Centre's fifteenth annual black-tie Awards Reception & Dinner will be held at the **Reform Club** in central London on **Tuesday, November 22**, the evening before the Centre's inaugural British Isles conference. The host is sports writer and former Reform Club chairman, **Mihir Bose.** The 2016 Awards Dinner brings together employee equity professionals to recognise the best in employee share ownership. The champagne reception and four-course dinner will be hosted in the grand Italianate surroundings of the Reform Club's library. As places are limited, book now to avoid disappointment A table of ten costs £1,800 + VAT. Individual tickets cost Centre members £195 + VAT each and £270 + VAT for non-members. To register, please email events@esopcentre.com or call 020 7239 4971.

**Lewis Silkin EOT seminar**

Centre member Lewis Silkin has organised an evening seminar on Employee Ownership Trusts at the offices of Make Architects, 32 Cleveland Street London W1T 4JY, 17:00-18:30 October 13. Admission is free. Contact Chris Yates chris.yates@lewissilkin.com to register your interest.

## EVENT REPORTS

**Centre-IoD share schemes for SMEs conference**

This year's employee share schemes for SMEs conference, jointly organised by the Esop Centre and the **Institute of Directors**, was held at the IoD's Pall Mall HQ on September 16 with a packed audience of some 70 small business owners, mainly hearing about share schemes for the first time**.**

Centre chairman **Malcolm Hurlston** told delegates he had got inspiration this year from a visit to the Far East sitting at the command desk of General Giap, who beat the French and then the Americans and showed what a small country or indeed a small business could do with guts and enterprise... and employees who were better motivated. "We are in a competitive world and we all need to make our businesses work better," he said. The recent changes in government could prove positive. Early signs were pretty clear that Theresa May took a keen interest in our topic. She had been early to call for a cull in fat-cattery with no more unbridled rewards for paper shufflers in big business. In the UK we had a raft of legislation which helped business make good use of the employee ownership effect. A billion pounds of taxpayers' money a year went on supporting it, which had proved to be good value for money and it was time that company-owning delegates looked at getting their share.

**Stephen Woodhouse** of **Pett Franklin** gave an introduction to share schemes. He said it was key to have a clear view of what the company wanted to achieve before choosing a plan. Directors and staff needed to understand the plan to ensure it would incentivise them. Share ownership is long term in nature therefore staff would want to stay longer in order to benefit, he said.

**Robert Postlethwaite** of **Postlethwaite Solicitors** focused on Enterprise Management Incentives (EMI), explaining which companies can qualify for EMI options and which can't. Postlethwaites itself would like to use EMI, but – being a law firm – it was prohibited from doing so under the government's rules. He concluded that EMI was the probable answer for most SMEs, being tax favourable and simple. Even so, clear communication was key: participants must understand the scheme.

**David Craddock** of **David Craddock Consultancy Services** offered five EMI case studies, involving companies in different stages of evolution. He said that EMI was simple yet subtle, which made the scheme very flexible.

**Colin Kendon** of **Bird & Bird** discussed other schemes which SME companies could use – such as the Company Share Option Plan (CSOPs) or Joint Share Ownership Plans (JSOPs) – if they did not qualify under EMI rules. He summed up by listing the alternatives from worst to best schemes to benefit employees, starting with (a) a non-qualifying option, which would be little different from paying a cash bonus, then (b) the CSOP which was easier to qualify for than EMI but the tax relief was not as good and there was a limit on it. The next best (c) would be nil paid shares, though you would need a professional valuation to avoid high tax bill later on. Then (d) the JSOP set up as an ESOP as it was split between the trustee and the employee, the downside being that it is possible that users would pay higher tax and it is complicated as a trust needs to be set up. The best alternative (e) to EMI would be growth shares which could be operated with a 'shares for rights' scheme, he added.

**Ann Tyler** of **Lewis Silkin** explained how employee ownership benefited smaller companies. She considered the changing political climate from 2015 and the end of the Coalition to Theresa May's "economy that works for everyone". She thought the culture of employee ownership could contribute possible opportunities to stabilise a post Brexit economy.

There was a lively panel session for companies new to share schemes. Questions included 'Can Eso be applied to an LLP?' Answer: the schemes discussed so far cannot be applied, but Ann Tyler cited the recent adoption of employee ownership at Grant Thornton saying that although there is no share ownership, it does mimic an eo company. Question: 'Can one re-structure a Gibraltar based company to qualify for EMI?' Answer: Technically possible. A company does not have to be UK based to qualify for EMI.

After lunch, Stephen Woodhouse of **Pett Franklin** stepped in for his colleague **William Franklin** and ran through the intricacies of company valuation, which had to be negotiated when an SME wanted to launch employee share schemes. He was critical of HMRC for having withdrawn the Post Transaction Valuation Check (PTVC) discretionary procedure, which allowed a company to seek to agree the taxable market value of equity awards shortly after they were awarded. The withdrawal of PTVC and Best Estimate valuation agreement procedure for Income Tax (ITEPA) purposes for share schemes (affects NIC as well) was causing problems, he said. He gave an update on the Centre's work with the Financial Reporting Council saying that he had been lobbying on employee trusts in order to resolve problems before they arise. The chairman said the Centre was taking the lead in helping SMEs with the EOT opportunity: there would be an EOT forum on the website.

**Mark Gearing** of **Fieldfisher** discussed exit planning for SME founders and management. He urged company owners to put plans in place well in advance of any exit.

**Garry Karch** of **RM2 Corporate Finance** introduced the role of employee benefit trusts (EBTs) in succession planning. He pitched his issue as a battle between EBTs and the relatively new structure, the Employee Ownership Trust (EOT). Garry said the first question you needed to answer was "What do you want to accomplish?" before you could begin to look at the options available. Then users needed to consider the time frame and being honest about it; decide what is more important, money or legacy. An EBT was an independent entity; it did not pay tax if not in the UK (Garry advised to check with a tax adviser to establish if off-shore was the right option), but CGT applied when selling to an EBT. He suggested an EOT was best for selling 50 percent or more of the company, whereas an EBT was best for selling a minority stake, particularly to key employees.

**Graham Muir** of **Nabarro** assessed in detail the characteristics and advantages of the EOT. He said that the EOT was a great idea, but the government had not made it easy, setting many conditions. The main condition was that all eligible employees – and no one else – must be included. He added that HMRC would not tell you whether you satisfied all the conditions before you applied, therefore setting up an EOT called for professional advice.

The busy day concluded with a **panel** for advanced questions, including: "The all employee requirement for the EOT is ok for the UK, but not for internationally based employees. Was this intended? and how far would all-party support go?" There were questions about dilution in CSOP and EMI plans to which the answer was to not to focus on percentages as this negatively affects employee perception, but talk of values instead. Communication is key.

**Institute of Directors annual convention**

Business secretary Greg Hands MP made a topnotch speech at the IoD's annual convention at the Royal Albert Hall this week. He emphasised the role SMEs could play in growth and announced he would be touring the country including IoD branches to listen. He paid tribute to retiring IoD chief executive Simon Walker who had been early to warn about the fatcattery which Theresa May was now addressing.

Delegates were motivated by Dame Kelly Holmes and also by a Leeds start-up.

Malcolm Hurlston was joined in the Centre box by Credit Strategy co-owner Kamala Panday, former

CIFAS chairman Ken Cherrett and RM2's Garry Karch.

## MOVERS AND SHAKERS

**Bedell Trust MBO is completed**
The management buyout (MBO) of Centre member **Bedell Trust** has received all regulatory approvals and was completed on September 12.
The MBO is backed by **Inflexion**, a leading independent private equity firm, who have considerable experience partnering firms in the financial sector.
Paul Anderson, trust director at Bedell, told *newspad:* "We are now an independent company run and managed by the existing management team. This is an exciting phase in the development of Bedell Trust as it will enable us to accelerate our growth plans, invest further in our people and technology which supports our continued commitment to the highest levels of client service."
Bedell Trust has more than 250 employees and operates from Jersey, Guernsey, London, Luxembourg, Dublin, Singapore, Mauritius and Cayman.
Nick Cawley, who will continue to lead the newly independent business as ceo, said: "Bedell Trust has witnessed accelerated growth in recent years and we anticipate this growth will continue. From our clients' perspective, there will be no change to the management team or their existing relationship contacts and we remain firmly committed to providing best in class service. Indeed, we believe our MBO will help create an even better platform to further build our offering to clients."

**Intertrust completes Elian takeover**
The listed company **Intertrust** completed the acquisition of Centre member **Elian** on September 23 after receiving all regulatory approvals. As a combined group, it will operate from 42 offices in 31 key financial markets. 2,400 professionals will provide exemplary trust and corporate services to clients. Combining the two companies means: more people in London, Cayman, Guernsey, Jersey, Luxembourg and the Netherlands; new offices across the Middle East, Asia, Europe and the Americas; strengthened and broadened services in corporate services, capital markets, private equity & real estate funds, private wealth, employee and executive incentives and compliance & regulatory Services. Full integration of the companies – and the re-branding of Elian as Intertrust – is expected by the end of this year.

**Bedell Trust** was named Trust Company of the Year at the 2016/2017 annual STEP (Society of Trust & Estate Practitioners) awards.
**Shervin Binesh**, formerly of **Western Union Business Solutions**, where he was accountable for £16m in annual revenues, has a new job – client account director – at the shareholder solutions division of **Capita Asset Services**. Its offices are at 40 Dukes Place, London EC3A 7NH and Shervin's contact numbers are M: +44 (0)7753 223570 (Preferred) T: +44 (0)20 7397 6230
**YBS Share Plans**, part of **Yorkshire Building Society**, was recognised for its commitment to help more people save for their futures at the Workplace Savings and Benefits Awards 2016. Perkbox was named Flexible and Voluntary Benefits Provider of the Year.

## UK CORNER

**Postal employee shareholders SIP goldmine**
**Royal Mail**'s 139,000 employee shareholders stand to make a pre-tax profit of almost **£3,000** each, were they to sell the first tranche of their free shareholdings later this month.
The ex-Coalition government's privatisation of Royal Mail (RM), in which all eligible posties initially obtained 613 free tax-approved Share Incentive Plan (SIP) shares three years ago, is turning into a goldmine for employees, despite ups and downs in the share price.
The market value of RM shares rose from the launch price of 330p each to 520p each two weeks ago, before falling back to 502p each on September 27 – but this was still an increase of 52 percent. Then came the shock news that **Deutsche Post** had bought RM's rival parcel delivery company, **UK Mail**, for £243m, forcing RM's share price down again to 485p.
Even at that lower price, posties would still make a pre-tax gain of almost £3,000 on 613 shares, were they to sell all of this first tranche after the 15th.
However, if postal employees do so, they will have to pay Income Tax and NICs on their gains. Nevertheless, it is certain that some will need the cash and so will sell.
They will have to wait another two years, under SIP rules, before they can sell their initial shareholdings completely free of Income Tax, NICs and Capital Gains Tax. Collectively, postal employees were offered ten percent (100 million shares) of RM's equity when a majority stake in the former state enterprise was sold off in October 2013.
They all should have received 729 free shares each on October 15 2013, but the big immediate rise in RM's share price post privatisation meant that they would have breached HMRC's then maximum £3,000 limit in any year for free SIP share awards. So they had to wait until the start of the next tax year on April 6 before they received the balance – a further 116 free shares each.
Subsequent free share awards to postal workers had taken their average holdings up to 810 each by September last year, with another batch of free shares potentially due this autumn.

This increase was partly due to the personal decision of the previous Business Secretary Sajid Javid to award the posties a further one percent of RM's total equity – in the form of free SIP shares – when the last publicly owned shares in the business were sold last year. They each received 90 more free shares in September last year.

Another reason for the RM employee free shares bonanza lies in the annual rate of staff resignations or retirements, because the SIP scheme rules state that departing staff have to give their free shares back to the company, unless they are leaving for an approved reason, like redundancy, ill-health or death in the immediate family.

Furthermore, 15,000 RM employees – one in every ten – purchased at least £500 worth of additional shares – i.e. at least 151 extra shares each at the offer price – putting at least 3m more shares in employee hands. Their requests to buy a minimum of £500 worth of RM shares, up to a maximum of £10,000 were met in full.

On top of that, about 35,000 of these postal employees are participating in RM's separate SAYE-Sharesave scheme which, when launched, offered a discounted share price of 360p per option to apply once the shares can be purchased – from December 1 next year – when the three-year savings contract ends. So many postal staff applied to join the SAYE scheme that their demands for share options had to be scaled back in many cases.

The original number of posties who received free shares was 150,000 but this number has shrunk to 139,000, mainly due to the reasons stated above. New RM employees are not offered free shares and so returned shares are then shared out among the existing employee shareholders.

The average value of a postie's full employee shareholding had risen from an original to almost £4,000 by September 28– not including total dividends worth a further £248 each since privatisation – to which must be added the value of more free shares they hope to receive this year. This year's dividend, which they all received, was increased to 22.1p, despite reduced profits.

The RM SIP, administered by Centre member **Equiniti**, is by far the largest single all-employee share scheme in the UK.

**Employee ownership 'on a roll'**

Employee-owned businesses are on a bit of a roll, wrote Patrick Hosking, financial editor of *The Times*: "These are for the most part commercially savvy and professionally managed businesses." He was commenting on the news that Peter Neumark has given **CMC**, his classic car restoration business, to its 60 staff, via an Employee Ownership Trust (EOT).

Employee-owned businesses include not only the **John Lewis Partnership**, but large consultancies such as **Arup** and **AT Kearney** and a string of innovative companies like **Childbase Partnership**, the nurseries operator, **Cambridge Weight Plan**, the diet products group, and **Gripple**, an ingenious fasteners manufacturer.

Neumark, a vintage car fan, co-founded the Shropshire-based company as a hobby business, restoring cars for fellow enthusiasts. It grew into a profitable operation with a loyal client following, highly skilled workforce and a £5m turnover. Now in his late 60s, Neumark considered its long-term future. As he'd made £50m selling his Target Express parcels business, he started looking at gifting CMC to an employee trust: "Virtually every example of an employee-owned trust business we looked at showed greater profitability, greater productivity, better staff retention and ultimately of course happier customers," said Neumark. "This sort of structure was the best home for the company to ensure its future, safeguarding the jobs of its highly skilled workforce and providing stability for future growth and prosperity," he added.

Day-to-day management is controlled by a board, comprising the chairman, md, production director and two non-execs who in turn report to a board of trustees – responsible for the good governance of the company and ensuring it is run in the best interests of its beneficiaries, the employees. The company is working on 22 classic car restorations, including famous marques such as, Aston Martin, Jaguar and Lancia.

"An employee-owned culture can buzz with creativity," wrote Hosking. "Hugh Facey, founder of the Sheffield-based Gripple, is full of enthusiasm for the worker-ownership model. He insists that all 460 of his employees spend at least £1,000 each on buying shares in the business, lending them the money if necessary. The long-servers who joined in the 1990s have made more than 21 times their money. Applied correctly, employee ownership can engage and motivate employees and keep them loyal." At Gripple, no-one has a job description. Anyone seen backsliding is soon told off by colleagues. Innovation is king: between four percent and five percent of revenues are ploughed into research and development each year and Facey aims for a quarter of sales to come from products invented in the previous four years," said Hosking.

"There could hardly be a more apt business model for the era of PM Theresa May and her pledge to build a Britain for the many, not just for the privileged few. However, there have been disappointments too. **Triumph Motorcycles**, which was owned by a worker co-operative backed by government loans in the 1970s, went bust in 1983. **Loch Fyne Oysters** had a brief spell as employee-owned but was sold to a trade buyer and private equity in 2012 after heavy losses.

"Employee ownership can stifle innovation as well as stimulate it. John Lewis may be the pin-up of the sector, but in the 1990s it was regarded as a laggard.

It underinvested, partly perhaps because of pressure to keep paying a staff bonus. Its checkout staff at **Waitrose** were keying in individual prices long after its peers had introduced scanning technology. Its management was seen by some as bureaucratic and complacent. For a democratic company, it was surprisingly formal and hierarchical. As late as the 1990s, staff had to call bosses by their surnames."

In fact, the **John Lewis Partnership** is far from well**:** its pre-tax profits for the six months to July (2016) slumped by almost 15 percent to £81.9m, after being hit by a 'very competitive' retail market and higher staff pay. Job reductions are on the way. Operating profits for JLP stores fell 31 percent to £32.4m and were down 29 percent to £96.3m for Waitrose, way below what City analysts had expected. Employee-owned John Lewis shares its profits among more than 90,000 staff. Last January, staff learned that their annual bonuses, which are paid in cash and not shares, had fallen for the fourth consecutive year to ten percent of their annual salary, down from 11 percent in 2015, 15 percent in 2014 and 17 percent in 2013. The deficit in the partnership's pension fund soared 54 percent to £1.45bn compared to January's deficit, due to low bond yields. Staff recently agreed to allow their final-salary pension scheme to be watered down after its deficit widened.

"Tough decisions have to be taken in bad times. When redundancies are necessary, a worker-owned company can be at a disadvantage. Even having more loyal staff can be a two-edged sword. The workforce ages and can be more resistant to the kinds of re-skilling and adaptation needed as competitors come up with innovative products or working practices," wrote Hosking. "There are fewer infusions of fresh blood with new ideas. Risk aversion can creep in." However, John Lewis md Andy Street is parading a £150m investment in highly automated warehouses, in spite of it leading to job losses. Employee-owned businesses have undeniable advantages, but they will lastingly prosper only when they are as disciplined as their conventional competitors, he added.

### Legislation

The Finance Bill passed through all its stages in the Lords on September 13 and has received Royal Assent. The **Finance Act 2016** (chapter 24) is at http://deloi.tt/2crKIio During the Lords debate there was criticism of what was seen as an overall lack of coherence and direction in tax policy making. Lord Kerr of Kinlochard suggested the Office of Tax Simplification (OTS) should either be genuinely independent like the Office for Budget Responsibility or on a statutory footing, inside the Treasury, but allowed to see tax measures in advance.

The financial secretary to the Treasury announced that, following the Autumn Statement, to be delivered on **November 23,** draft clauses for **Finance Bill 2017** will be published on Monday December 5. Consultation on the draft legislation will be open until January 30 2017.

### MPs to probe executive reward levels

MPs launched a new inquiry into executive pay and corporate governance in the wake of high-profile hearings on Sports Direct and BHS, as Theresa May prepares major reforms, such as employee representation on boards.

Iain Wright, chairman of the Business Select Committee, said MPs would investigate an array of issues that are "tarnishing the reputation of business and undermining public trust in enterprise". As well as examining how changes to rules on executive pay and employee representation might work in practice, the Committee will look into the continued under-representation of women on boards.

TUC analysis revealed that in 2010, the average FTSE 100 boss earned 89 times the average full-time salary. By 2015, this had risen to 123 times; the gap between low-paid workers and top directors is even starker. The average FTSE 100 top director earned a year's worth of the minimum wage in a day; and the median total pay (excluding pensions) of top FTSE 100 directors increased by 47 percent between 2010 and 2015, to £3.4m. By contrast, average wages for workers rose just seven percent over the same period and are still way down in real terms on the pre -crash level.

Wright, Labour MP for Hartlepool, said: "Irresponsible business behaviour and poor corporate governance certainly act against the interests of workers, but they also act as a brake on long-term prosperity and profitability in companies. We on the committee are keen to explore the issue of ever-growing pay increases to executives, especially when there often seems to be very little connection with company performance or any pay rises for the vast majority of employees. While there have been some recent shareholder actions against these ever-larger pay packages, can we have any confidence that the current framework for controlling pay is working?"

The Committee is asking for written submissions by Wednesday October 26. Historic editions of newspad have already been provided to the Clerk to the Committee to inform the work.

The PM has signalled an overhaul of rules on executive pay just three years after the Coalition introduced triennial binding shareholder votes on company remuneration. Vince Cable, the former Liberal Democrat Business Secretary behind those reforms, warned against plans for giving investors an annual binding vote on pay, however, claiming it could trigger a wave of litigation by executives.

*Meanwhile**, Legal & General Investment Management (LGIM)**, the fund management arm of the insurance company, put forward two proposals to tackle perceived 'excessive' executive reward:

First, LGIM said public companies should be obliged to publish the ratio between the ceo's pay and that of the median employee.

Second, LGIM said directors' total annual bonuses should be capped at twice salary. "This idea is more inflammatory because some remuneration committees seem to believe that executives won't put in a decent shift unless they are chasing bonuses worth up to 500 percent of salary," said *The Guardian.* "Such inflation has served to disguise the truth about bonuses. They have become a form of semi-guaranteed salary supplement: an executive has to mess up monumentally to get nothing. In the process, the original meaning of a bonus – a reward for exceptional performance – has been ignored. A cap at 200 percent would restore a degree of sanity."

News of the Parliamentary inquiry received backing from business groups and trade unions. Simon Walker, director general of the **Institute of Directors**, called on business leaders to co-operate with MPs, saying that the "reputation of corporate Britain has not recovered from the financial crisis". He added: "There are important questions that need to be addressed on issues including transparency, executive pay and board diversity. The Prime Minister has made clear that company boards are in her sights, so directors must fully engage in this debate."

**TUC** general secretary Frances O'Grady said poor governance was contributing "not only to high-profile corporate disasters such as BHS, but also to short-termism and excessive executive pay".

*A paper entitled *Restoring responsible ownership – ending the ownerless corporation and controlling executive pay,*' written by Chris Philp, Tory MP for Croydon South, was published last month. Philp launched the paper in conjunction with the left-leaning **High Pay Centre**. He argued that shareholders have failed to exercise proper oversight of the companies they own: "shareholders seem to be passive onlookers to pay trends, given their short term holding periods and the relative immateriality of board pay to the overall financial accounts".

The paper was endorsed by host Lord Myners who stated that shares had become "evidence of an ownership claim rather than acknowledgement of ownership responsibilities and obligations. The mentality of share investors has switched from that of a car owner to a car renter".

Neil Woodford of **Woodford Investment Management** said: "In many institutions, corporate governance duties have been separated from fund management responsibilities with the result that engagement is often not as effective as it should be. Short-termism, which is frustratingly rife in fund management, also hinders the UK's institutional investment industry's ability to hold executive management to account in an appropriate and effective way".

The key issues highlighted in the report include:

- Fragmented shareholdings and short-termism resulting in shareholders not exercising proper oversight of the companies they own. This allows directors to run companies in their own interests and not in the interests of shareholders or other stakeholders.
- Shareholder engagement typically taking place on a one-to-one basis making it hard for shareholders to exercise collective pressure.
- The chairman of a company being often responsible for choosing board members with shareholders rubber stamping the recommendations.
- 'Norms of deference' being a major barrier to executive oversight and weak board oversight at the core of the compensation problem.
- High ceo pay becoming the 'fulcrum for discontent' over a widening pay gap and seen as insufficiently linked to performance. The paper includes data relating to the increase in ceo earnings between 2000 and 2013 compared to the changes in performance based on a number of performance metrics. The paper quoted academic research suggesting that high ceo rewards can lead to relative under-performance.
- Disclosure rules leading to 'ratcheting' as companies increasingly benchmark pay with remuneration committees and shareholders able to relinquish some of their responsibilities by using benchmarking to justify pay settlements.

The paper proposed three areas of **reform:**

- **Mandatory publication of pay ratios** – this would require the publication of the ratio of the ceo single figure of remuneration and the median employee total pay and would be disclosed for the year under review and the year before. The paper said that 'publishing the ratio will make a statement about how the accepted measure of pay at the top compares with pay throughout the rest of the organisation'.
- **Binding annual vote on pay** – an annual binding retrospective vote makes companies accountable for the outcome of their policy. Shareholders can make an informed decision which will have real impact.
- **Mandatory shareholders committee (SC)** – this idea is based on the Swedish concept of a shareholder nomination committee and is designed to give shareholders greater influence over board composition and executive pay. The SC should comprise the top five shareholders (if one declines it passes to the next largest), based on the largest shareholders who have held the stock for more than 12 months to avoid short term traders. The SC would be chaired by largest shareholder. The chairman of the board would attend the meetings and may speak but not vote. An elected employee representative (not a trade union representative) may attend and speak but not vote. The SC would replace the nomination committee and would have responsibility for recommending appointment and removal of directors, which would then be voted on at an agm; approve the policy and specific pay packages proposed by the remuneration committee before a binding vote by all shareholders and put

questions requiring a response by the Board on corporate strategy and corporate performance.

Centre member **Deloitte** said: "We welcome the debate taking place around executive pay and consider this paper to make a helpful contribution to that debate. We agree that issues of inequality and wider considerations of good governance and social responsibility need to be addressed. We fully agree with the basic argument that shareholders need to play a much bigger part in controlling executive pay.

"Pay ratios may be a helpful and insightful piece of information for the remuneration committee to consider as part of the deliberations on executive pay, particularly noting how they change over time. We believe that change is more likely to be driven by making the committee aware and provoking debate than by the disclosure itself. We are less convinced that publishing one simple ratio is helpful – it may well prove to be too blunt a tool to be meaningful. We consider that there may be other broader ratios which would give a more meaningful picture. The gender pay disclosure regulations which are due to come into force later this year are already generating a lot of productive discussions in boardrooms which is very positive. It may be worth considering ratios along similar lines to these. We think there would be merit in extending this requirement to all companies above a certain size rather than just those listed in the UK, as is the case for the gender pay gap requirements.

**Binding annual vote on pay** – this would give shareholders the power to block controversial decisions. There would be practical issues in holding a binding vote on remuneration which has already been paid which may undermine its effectiveness by making shareholders more reluctant to vote against. We suggest two potential ways forward. If there is to be a binding annual vote, it should be limited to variable pay, salary increases and termination payments – so that these elements can be held back until approved. Alternatively a 'yellow card' could be introduced so that if a company received less than 75 percent of votes in support, a binding vote would be required in the following year, giving companies the opportunity to address the problem.

**Shareholder committees** – given that shareholders have so far failed to use the powers they have, we are not convinced that the introduction of a shareholder committee would have the desired effect. We do strongly believe that the employee's voice should be heard by the remuneration committee. We consider that there may be merit in introducing an internal employee forum which the remuneration committee would be required to consult with on a regular basis. This could take the form of an elected committee of employee representatives focused either solely on remuneration issues, or perhaps more widely on strategic issues.

Centre chairman **Malcolm Hurlston** writes: "Centre dinner guests and regulars like Patrick Neave (ex ABI), Paul Jackson (Investors Chronicle), Tony Hilton (Standard), Nigel Mason and Daniel Godfrey (ex IA) were much in evidence and leading the questioning at the launch of the top pay paper at the standing room-only launch in the Houses of Parliament. I told the meeting about the importance of employee shareholders and suggested employees choose their own representatives. I invited Chris Philp to join us at a high table dinner. Questioners from Sharesoc wanted smaller shareholders in the game too."

**Taxation**

*New Centre member **ZEDRA** reported that changes to the way UK resident non domiciled individuals and residential real estate held through corporate vehicles will be taxed in future have been clarified by the UK Government, following the publication of its latest consultation document. These changes mean that those affected should now review what the most effective strategy is for re-structuring their wealth before April 5 next year. Non-doms will be deemed domiciled in the UK for all tax purposes once they have resided in the UK for 15 out of the last 20 years. The counting of 'split years' means non-doms could become deemed domiciled after only 13 years. The remittance basis of taxation will no longer be available to those who are deemed to be domiciled in the UK. Inheritance Tax will apply to all residential real estate irrespective of how the property is owned. This extinguishes the inheritance tax advantage enjoyed by non-doms owning UK real estate through offshore companies (subject to certain debt relief provisions).

*HMRC released a consultation document *Strengthening Tax Avoidance Sanctions and Deterrents: A discussion document*. It proposed a new penalty for those who enable tax avoidance and changes to the existing penalty legislation which applies to those who 'use avoidance which is defeated'. The main part of the document consists of:

- proposals for penalties for enablers of tax avoidance schemes later defeated in court
- proposed stiffer penalties for those who use tax avoidance which is defeated
- the types of arrangements to which the proposals apply
- discussion of other ways to discourage avoidance.

The plan is to develop a definition by reference to 'relevant defeat' of arrangements from the Promoters of Tax Avoidance Scheme legislation in **Finance Bill 2016**. Responses are requested by **October 12 2016,** warned Centre member **Deloitte.** After the consultation closes, a response document will be published later and any legislative changes will be taken forward as part of a future Finance Bill. See http://deloi.tt/2b1lb1l

* The Institute of Chartered Accountants in England & Wales criticised HMRC's proposal to abolish NIC elections in share schemes. In a statement, the ICAEW said that the purpose of introducing the election was to give certainty to business. When para

3B was introduced, the Inland Revenue press release dated 19 May 2000 had said: "Companies with very volatile share prices have expressed concern that their exposure to unpredictable NICs liability on unapproved share options could endanger their investment strategies, damage their future growth by deterring investors or even make them insolvent.
"Without the ability to make a joint election to pass the liability to the employee, there was a huge deterrent, particularly to IT start-ups, against granting shares to employees. Accounting issues were secondary. The real problem for employers – as the Inland Revenue recognised – was the deterrent effect of a possible huge unquantifiable future liability. We consider that the reason cited by the former Inland Revenue for introducing the NIC election remains as valid today as it was in 2000 and would welcome clarification of whether, and if so how, HMRC thinks that things have changed in this respect," added the ICAEW.
It was responding to a consultation launched by HMRC about the NIC elections abolition plan. Where a chargeable event occurs in connection with employment related securities, like share options and with restricted share awards, a primary and secondary Class 1 NIC liability arises. A primary Class 1 NIC is payable by the employee and a secondary Class 1 NIC is payable by the employer. The secondary Class 1 NIC can (in these limited circumstances only) be transferred by the employer to the employee by either an NIC agreement or an NIC election. With an NIC agreement the secondary Class 1 NIC liability remains with the employer and the employee agrees to indemnify the employer against this liability. With an NIC election, the secondary Class 1 NIC liability transfers from the employer to the employee and it must be approved in advance by HMRC. Approval for an NIC election is a paper-based process, but HMRC is implementing a digital strategy aimed at reducing paper-based processes.

**Pensions disaster gathers pace**
*Newspad* returns regularly to the UK occupational pensions front because the less generous these schemes become, the greater the significance of having long-term savings like employee shares – perhaps in an ISA – handy after retirement, especially as bank account interest rates are nearing zero.
Even before the UK's decision to leave the EU, defined benefit (DB) pensions schemes were under strain. People live longer, the ratio of pensioners to contributing members is rising and most schemes do not have enough funds to meet their obligations in full. However, the Brexit vote made things worse, resulting in the shortfall between assets and liabilities in DB schemes increasing dramatically, said lawyers **Hill Dickinson**. The yield offered by government bonds has collapsed, sharply increasing the cost on paper of financing future retirement benefits. In addition, DB schemes have been hit by the Bank of England's own monetary policies designed to keep the economy on track. It has cut interest rates to the historic low of 0.25 percent and announced a £70bn quantitative easing and £60bn of gilts purchases.
While company shares that pay regular or growing dividends have become attractive to income investors over the past few years as bond yields have already been low, there is a prospect of pension scheme deficits threatening those dividends too. As occupational pension scheme deficits worsen, attention has moved towards the level of dividends being paid out by companies. The actuarial consultants, **Lane Clark & Peacock**, detail in their annual *Accounting for Pensions report* that the combined pension deficit of the 56 companies in the FTSE 100 that disclosed fund deficits at their 2015 year-end was £42.3bn. Those same companies paid dividends totalling £53bn – about 25 percent higher. If such companies can afford to pay out dividends worth more than the pension scheme deficits, then they should be tackling their pension deficits, according to critics.
Unsurprisingly, more companies are trying to close their DB pension schemes to future accrual, in an attempt to curb pension liabilities, as at **Marks & Spencer** which is embarking on a closure exercise. Just 23 of the FTSE100 companies still allow rank and file employees to accrue new benefits from their final salary pension schemes, having closed access to new employees.
What the others have done is to shift their employees onto less generous defined contribution (DC) schemes, in which the final pension level depends upon contributions (from both employer and employee) and investment performance. Few people know that funding pension deficits is not a corporate legal obligation because company pension funds are separately managed. Whilst the fund may feel it should contribute, deficits remain a shared responsibility.
**BAE Systems**' pension deficit increased by £1.6bn in the six months to June 30 2016, it has revealed. In the group's half year results, it said its share of the pre-tax accounting net pension deficit increased to £6.1bn from £4.5bn at December 31 last year. Despite this, it said the cash contributions in 2016 to fund the deficit recovery plans of the relevant pension schemes are expected to remain at £0.3bn pa.
**Tesco**'s pension deficit has doubled in the past year to more than £5bn, claimed the *Telegraph.* It said that **Imperial Brands**, the **National Grid** and **RBS** faced expensive revaluations of their pension schemes this year, whilst **Lloyds** and **BT** revalue next year Earlier this year, Tesco closed its final salary based scheme in favour of a defined contribution scheme, which is cheaper for the company, but more risky for the employees.
Orthopaedics specialist **Smith & Nephew** announced plans to close its final salary pension

scheme to new accruals. Around 350 employees are still members of S & N's defined benefit (DB) pension scheme, in which workers are guaranteed either their entire salary, or a percentage of it, on retirement. Under the terms of the new deal, their accrued rights will be protected, but any new pension accruals will be switched to the company's DC scheme. An employee claimed that they would be roughly 30 percent worse off as a result of the changes, which are expected to take effect in January, pending further consultation. The final salary scheme closed to *new* members a decade ago, but has been running for existing members ever since. More than three-quarters of Smith & Nephew's 1,550 UK employees are members of the defined contribution scheme, and sources say the new structure would simply bring a small group of people in line with their colleagues.

In the last decade, about 1,100 company pension schemes have claimed rescue funding from the Pension Protection Fund (PPF), which taxpayers support. Among them is fallen retailer **BHS**. However, the maximum pension which the PPF will pay out is only 90 percent of what it should be.

**Bonuses still marching ahead**

UK companies awarded a record £44bn in bonuses last year, as employers outside the financial sector pushed payouts beyond the 2008 peak. Total bonus payments in the year ending March 31 rose 4.4 percent to £44.3bn, according to **Office for National Statistics (ONS)** statistics. The total beat the record of £42.5bn that had stood since before the financial crisis – which led to sharp reductions in payouts by banks and other financial companies.

Finance and insurance remained the biggest contributor to the total, handing out £13.9bn to employees – an increase of 2.2 percent from a year earlier. However, other sectors, such as IT and communication services – including marketing, advertising and PR – contributed more to growth as bonuses at non-financial companies rose 5.4 percent to £30.4bn. The rewards on offer in the communications business were highlighted when **WPP**, the world's biggest advertising company, paid its founder and boss Sir Martin Sorrell almost £67m in bonuses for last year. Though shareholders approved the payment, WPP suffered a rebellion as did **BP**, where a majority opposed chief executive Bob Dudley's bonus-fuelled £14m pay deal.

Bonuses are spreading beyond the City, even as evidence mounts that the payouts are not good for companies in the long run. A Cornell Law School study found in 2014 that a company performs worse the more it pays its ceo and that bonuses promote selfishness and opportunism. Finance and insurance workers received the highest average bonus at £13,400 while people in health and social work got very little. Neil Woodford, one of the UK's top fund managers, scrapped bonuses for his employees, arguing they are ineffective and can encourage bad behaviour.

**Troughing at mental health charity**

The ceo of the mental healthcare charity **St Andrew's** received a £99,000 bonus last year, taking his total salary package to almost £500,000, the charity's latest accounts show. Gil Baldwin, who was appointed ceo in July 2014, was paid a basic salary of £328,000 in the year to 31 March 2016, but this rose to £489,000 once the bonus, pension and other benefits were added. The total amount spent on payments to the charity's eight executive directors, including pay, bonuses, benefits and pensions, was almost £2m last year, said the magazine *Third Sector.*

St Andrews executive team didn't do badly either. Seven were paid more than £200,000 in 2015/16, the accounts showed. Most received substantial bonuses too; Warren Irving, its chief operating officer, was paid a £43,000 bonus and its chief medical officer got £40,000 extra. The charity's chief finance officer and interim company secretary received a £51,000 bonus and its HR director got £38,000 extra.

St Andrews, which employs more than 4,000 people on its UK sites, provides specialist and secure care pathways in mental health and neuro-psychiatry. Its in-depth expertise includes trauma, personality disorder, psychosis, autism, learning disability, brain injury and progressive neurological conditions, such as Huntington's disease and dementia.

A spokeswoman for St Andrew's Healthcare said: "As a major charity playing a vital role in the support of patients with complex needs, it's essential that we have strong leadership. Without it, we won't achieve our vision of transforming lives by building world class-mental healthcare services. World-class services need world-class leadership and our board and court of governors recognise that it's well worth investing in this level of leader." She said that the charity benchmarked its salaries and benefits against organisations including other mental healthcare providers and the NHS: "The pay of our senior executives is determined by the remuneration committee, which benchmarks salaries and benefits against other mental healthcare providers, the NHS and other organisations similar to St Andrew's. In addition, we appointed external remuneration advisors this year for independent confirmation that our levels of pay and bonuses are fair – in fact, our ceo's salary is significantly lower than at our private healthcare competitors. We believe in using a bonus scheme to reward proven performance, because a strong focus on quality and patient care is vital for delivering our aims."

## COMPANIES

Shareholders in microchip designer **ARM Holdings** overwhelmingly backed **SoftBank**'s £24.3bn takeover offer, worth £17 (all cash) per share, quelling cries from some quarters that the deal should be blocked. The deal cleared its final hurdle when 95 percent of shareholders endorsed it at a London egm. The deal has triggered windfalls in the Cambridge company's boardroom, with ceo Simon Segars and chief technology officer Mike Muller collecting £55m between them. Employees at the group could ultimately share almost £400m through share incentive schemes. Arm has 1,695 UK-based employees, and about 3,500 other non-UK based employees. Some decisions will be taken in Tokyo from now on, though Softbank promised to keep the UK HQ in Cambridge.

**Billington Holdings**: The company confirmed that Bedell Trustees Ltd, as trustee for the Billington Holdings Plc Employee Share Ownership Trust sold the following shares: on September 9 – 10,000 ords at £2.80 each; September 12 – 40,000 ords at £2.67; and September 14 –130,000 ords at £2.70 each. **Bedell Trustees**, as trustee for the Billington Holdings Employee Share Ownership Trust, now holds 450,491 ords, equivalent to 3.48 percent of the issued share capital.

The **Co-operative Bank** is considering raising salaries, despite continuing losses. The bank wants to increase pay packets in a bid to secure top talent, but can't easily do so thanks to the bankers' bonus cap rules, which stems from the Capital Requirements Directive, which prevents banks from doling out variable payments while loss making and until improvements are made to their capital positions. Boosting senior-level salaries among a number of options on the table for the bank's remuneration committee to mull over and further details will be shared with shareholders later this year. When the bank revealed its interim results (mid Aug), revealing a £177m pre-tax loss, ceo Niall Booker announced the bank had already planned new pay plans for many of the lender's workers but was still working out details for some of the more senior staff. "We hope to resolve this by the end of the third quarter so that we remain competitive and are able to attract and retain talented colleagues," Booker added. In 2015, soon to be departing Booker raked in £3.9m for his efforts, including £1.3m in salary. Back in 2014, the lender was the only one to fail the Bank of England's stress tests and has had plenty of questions to answer in recent years over a previous £1.5bn black hole in its accounts.

## WORLD NEWSPAD

**France:** French prosecutor probes **Areva** employee share purchase plan. France's financial prosecutor opened a preliminary investigation into possible misinformation and deception related to French nuclear group Areva's 2013 employee shareholding programme. The probe follows a complaint by the **CFE-CGC** trade unions about whether all participating employees knew in advance of buying the shares that some of its work projects could pose a threat to the company's finances. "We understand that some employee shareholders expressed their disappointment," an Areva spokeswoman told Reuters. "Nonetheless, Areva has always complied with the law in terms of financial communication," she added.

Areva launched its first employee shareholding programme for 1.2 percent of the firm's share capital in 2013, according to its annual report. Areva said 36 percent of its employees in France, the US and Germany participated in the share purchase plan.

However, at the end of 2014, the state-owned group said it would review its funding options and dropped its 2015–16 financial targets, blaming delays to its Olkiluoto reactor project in Finland, the slow restart of Japan's reactors and a lacklustre nuclear market.

"During the period of subscription to the employee shareholding programme in 2013, employees were informed that there was a risk of capital loss, inherent to any purchase and holding of shares," Areva added. The newspaper *Le Parisien* reported that investigators are trying to assess whether Areva management was aware of the upcoming problems as it invited employees to invest in the Eso plan.

**Germany:** Volkswagen should reduce the "huge sums of money" paid to executives and any bonuses should be given in shares, activist investor TCI Fund Management said in a letter to the car giant. The letter is billionaire Chris Hohn's latest push for change at Volkswagen (VW) through his hedge fund TCI, which is famed for high-profile spats with company boards. Hohn weighed in publicly last May to demand an end to boardroom "extravagance" after VW paid its top 12 managers €63m collectively for 2015, even though the company plunged to a record loss after admitting to cheating diesel emissions tests.

In his latest letter, Hohn called for an overhaul of VW's current pay system which he said paid executives "huge sums of money" if the company earned over €5bn of earnings before interest and tax. "This is obviously wrong," said the letter. Hohn added a new pay scheme should be transparent, easily measurable and poor performance should mean no bonuses.

VW said in a statement it was working on a new executive pay scheme that would come into force in its 2017 financial year, and that it would include ideas from market participants in its deliberations. Ben Walker, a partner at TCI Fund Management, separately told Reuters the key message was that 100 percent of any bonus should be paid in stock and vest over three to five years.

"Management must own a lot of stock so they are aligned with shareholders," he said.

**South Africa:** The offer period for shares in **MTN**'s new black empowerment scheme, MTN Zakhele Futhi, will close on October 21. Speaking at the launch in Johannesburg , MTN SA ceo Mteto Nyati said: "The MTN Zakhele Futhi offer is designed to give the black public an opportunity for take a stake in MTN's geographically diversified operations, earnings and growth markets."

The telecoms operator is inviting black South African individuals and groups to subscribe for123m ords in MTN Zakhele Futhi – at R20 a share (£1 = 15.5 Rand) – with a minimum investment of R2,000. MTN Zakhele Futhi will, in turn, acquire shares in MTN at a 20 percent discount to the transaction price.

MTN says Zakhele Futhi is potentially valued at up to R9.9bn and is forecast to hold four percent of the equity in the MTN group.

In the past, BEE shares were traded on the over-the-counter BEE market, but in 2014 the Financial Services Board mandated these shares to be traded on a licensed exchange in future. This led to MTN Zakhele listing on the JSE's BEE segment in November 2015. Nyati said MTN's transformation journey spans more than two decades, during which the company has sought to enfranchise hundreds of thousands of black South Africans and groups through empowerment initiatives, including the MTN Asonge and MTN Zakhele BEE schemes.

In addition, the MTN board proposed the introduction of a new employee share ownership plan for rank-and-file MTN staff, excluding directors and management.

**US: Wells Fargo**

"You should resign," Senator Elizabeth Warren (D-Mass.) snarled at Well Fargo ceo John Stumpf during a Senate Banking Committee hearing. "You should give back the money you took while this scam was going on, and you should be criminally investigated by both the Department of Justice and the Securities and Exchange Commission."

Stumpf was clinging on to his job as Wells Fargo finally moved to punish senior executives, including the outgoing head of its community banking division, as the fallout over its sham account scandal intensified. Two institutional shareholders in the world's most valuable bank demanded answers over payments to Carrie Tolstedt, who headed the division where the episode took place. The calls come after regulators disclosed that Wells staff, who were racing to meet sales targets, may have signed up more than two million customers for new accounts and credit cards without their knowledge, whilst charging them fees for the privilege.

Buckling under the pressure, Wells Fargo later announced that Stumpf would forfeit $41m (£31.5m) in bonuses and would not receive a salary during an internal inquiry the company has launched. The former head of retail operations, Carrie Tolstedt, will forfeit $19m of bonuses and has left without a payoff. The bank said forfeiting bonuses and pay-off did not mean there might not be more salary clawbacks from Mr Stumpf or Ms Tolstedt, depending on the results of the investigation.

US media asked: 'How does a board allow a ceo who created this culture to remain in the corner office? How can a ceo's definition of 'accountability' be taken seriously, when he keeps the $120m bounty he made from this five-year scam and then blames the mess on rank-and-file employees who were dismissed?

Stumpf's outfit emphasized cross-selling, which is selling a financial service to an existing customer. In this case, Wells Fargo employees 'sold' products to customers, including 2,673 from New Jersey, without their knowledge because the pressure to make monthly quotas was unrelenting. At least two million phantom accounts were created, inflating sales figures, jacking up the stock price and boosting executive bonuses. The bank fired 5,300 employees for misconduct and has been fined a record $185m. However, ceo John Stumpf refused to step down, though he accepted "full responsibility for all the unethical sales practices." One large investor told the *Financial Times* that Wells should reclaim bonuses from Tolstedt, who has received at least $45m in total pay since 2011. "There's no point having a claw-back if it doesn't claw in circumstances like this," the shareholder said. "What has happened at Wells is an affront to the integrity of the institution." Another investor said: "If this person presided over this, why no accountability? We have share-based pay so that it can be clawed back when people have been earning bonuses under false pretences, and if fraudulently opening client accounts isn't false pretences, then I don't know what is."

**Send your share scheme stories to newspad**

The Centre is always happy to publish in newspad stories from employee share scheme sponsor companies and/or their advisers about Eso schemes which have either matured, or launched recently. Readers like to know why specific schemes were launched, whether the main objectives were achieved, whether the schemes were financially successful and what the average employee participation rate was. Please email your share scheme information to newspad editor, Fred Hackworth, at: fhackworth@esopcentre.com for publication in the next issue.

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