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it's our business

newspad of the Employee Share Ownership Centre

New PM outlines economic democracy agenda

Prime Minister **Theresa May** dropped a political bombshell by outlining controversial plans to introduce sweeping reforms in UK boardrooms, to increase accountability and shareholder power, especially over executive reward packages.

During her Tory leadership campaign speech in Birmingham, she promised to end the 'anything goes' culture in parts of the City. Mrs May listed a series of specific measures she said would help curb corporate greed, which was widening fault lines in Britain's social fabric. Her proposed medicine comprises:

* Moves to strengthen 'say on pay' rules, giving shareholders more influence over how much executives are paid. The PM said she wanted to make shareholder votes on corporate pay binding, rather than merely advisory. The previous coalition government introduced a law forcing companies to hold legally binding votes on future pay policy every three years, on top of the annual non-binding vote on the packages contained in that year's remuneration report. That still applies, but Mrs May's plans would involve binding agm votes on policy and specific pay packages every year.

* The prime minister said she wanted to see both consumer and employee representatives sit on company boards: "It is not anti-business to suggest that big business needs to change," she said. This could mean between four and six 'worker' and consumer directors in total being appointed onto the boards of typical UK quoted companies if the German example were followed.

*She poured scorn on cosy non-executive 'sweetheart' relationships by attacking the way non-executive directors who were supposed to provide oversight of the way firms are run often came from the same 'narrow social and professional circles' as the executive team and "the scrutiny they provide is just not good enough." She explained: "So we're going to change that system - and we're going to have not just consumers represented on company boards, but workers as well."

* Mrs May wants to compel quoted companies to publish in their annual reports the ratio of their ceo versus median employee pay ratio. She wants to see more transparency about how bonus targets are met too.

* The PM pledged to veto any future takeover bids which threatened the UK's national interests.

Summing up, Mrs May said; "We're the Conservative Party, and yes, we're the party of enterprise - but that does not mean we should be prepared to accept that 'anything goes'." It was an astonishingly interventionist agenda for an (then – before her coronation) aspiring Tory PM to promote, in comparison to the kid gloves treatment of the City under the previous Cameron-Osborne regime.

From the Chairman

It's not quite like Prince Hal turning into Henry V, but Theresa May as prime minister is turning out to be a step up from Theresa May, credit card executive and points north. The darling buds of May could even have burst forth on the hustings for she took fast steps to act on fatcattery and better boards, midnight oil burning at the repositioned department of Business.

The fatcattery storm was predicted by the Centre's members at international events many years ago, workers on boards is more of a surprise. Employee share ownership as such was not mentioned but we have just the right tools for reaching her target groups of people who are working hard without gaining traction. The CSOP was made for them and I urge all members and advisers to press for CSOPs NOW so we can show we are onside with the agenda.

Then our other hopes like indexation of share scheme allowances and a stronger nudge campaign may well follow.

Our major hope is that employee ownership will once again be masterminded from Number 10 as it was under Margaret Thatcher and Gordon Brown when we made the best progress. On those grounds I am ready to hail a third golden age.

Malcolm Hurlston CBE

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The PM's plans and much more will come under the spotlight at the Centre's inaugural **British Isles, Brexit and Say On Pay** symposium, which takes place at Centre member **White & Case**'s City HQ on **November 23-24**. This new high-level exchange of ideas and experience is centred around the UK's vote to leave the EU and the new government's push on shareholder democracy, including 'say on pay'. Expert speakers from a range of leading consultancies, legal practices and representative organisations will take delegates through the many implications for the employee equity industry of the Brexit decision and Mrs May's corporate reform agenda in the years ahead (*For more details, including registration, see separate symposium story further on*).

However, the UK business community was deeply divided by Mrs May's surprise menu for dealing with the perceived social dislocation, especially outside the London bubble. Josh Hardie, deputy director general of the **Confederation of British Industry**, was decidedly huffy. He said: "Changes to pay reporting rules that have already taken place, including a binding shareholder vote on executive pay policies, have struck a good balance ... To ensure the most effective proposals are considered, it's important that issues – such as putting employees on boards, whether they would need to sit on the full board, and how they would use their voting rights – are discussed between the government and business."

The PM received more support from Simon Walker, director general of the **Institute of Directors**: "Once Mrs May identified what she saw as the problem, the logical next step was to put forward means of preventing remuneration from getting out of hand. In this case, the proposals are binding annual shareholder votes on directors' pay, and workers on boards. There are two possible ways for business to react to these suggestions. The first is to tell the government to stop sticking its nose into matters which should be decided by the market.

"The second reaction and I think the right one, is to recognise the scale of public discontent. We must realise that the only way to prevent this anger leading to badly designed regulation of top pay is for business to move first. If there is one attribute that dictates success in commerce, it is adaptability. Politics has moved remarkably quickly, now it's time for business leaders to show how adaptable they really are."

One of the UK's biggest fund managers backed Mrs May's proposed crackdown on 'excessive' executive reward. **Fidelity International** said her proposal to make all shareholder agm votes binding would help investors to influence company policy. The firm manages assets worth £185bn worldwide. Fidelity has long called for companies to adopt incentive plans for top executives that encouraged longer-term thinking. **Dominic Rossi**, Fidelity's global equities chief investment officer, said: "We first called for an annual binding vote in 2012. Extending shareholder powers even further will add significant momentum to our efforts to better align executive rewards with shareholder interests." In 2013 Fidelity said it would start voting against boardroom pay plans unless companies forced executives to hold shares more than three years before cashing them in. Just four companies in the FTSE 100 then had holding periods of five years or more, with periods of between three and five years for another 13, the firm said. Its campaign had helped increase the number with five-year long-term incentive plans (LTIPs) to 48, with another 17 having period between three and five years. Fidelity continues to challenge companies that have not extended the holding periods for their LTIPs to five years or more. The fund manager has voted against at least one remuneration proposal at 55 percent of annual meetings of FTSE 350 companies this year.

Ian McVeigh, head of governance at **Jupiter Asset Management**, said**:** "Mrs May's call to simplify bonuses and increase alignment with the long-term interests of the company is one proposal on which most people agree. Yes, I think, votes on pay should probably be binding."

However, he was sceptical as to whether employee directors would help British businesses in the longer term. "More concerning is her proposal to require companies to appoint employee-directors (EDs) and consumer-directors (CDs) to help ask the difficult questions, think about the long-term and defend the interests of shareholders. "It may be a policy she is genuinely keen on, but it is quite possible that it is just a stick to use to beat the City if it fails to produce radical change on pay in the UK. The failure to stop even the most extreme examples of pay at the top has led to the May proposals. While we don't yet know the detail of what is being planned, I feel the idea of EDs and CDs undermines the right of shareholders to appoint whom they want to run the companies they own.

"If it isn't to be an exercise in tokenism, the representation will have to be meaningful. Quoted company boards vary in size but 10-12 is a fair reflection of the average. If the aim is to provide a countervailing voice from employees and consumers, four to six representatives might be required.

"In Germany, where the concept is most embedded, one third of directors on the supervisory board are worker-representatives rising to half at the larger groups. The disasters at VW were not stopped by this board make-up. The alleged alliance between the chairman and the worker-directors apparently led to a toxic environment in board meetings," added McVeigh.

"At Jupiter, as shareholders, we regularly meet with the non-executive directors who oversee the business on our behalf. Having confidence in the NEDs and in open debate is critical to our ability to take a long-term view of a company. One NED at a well-known company told us that the minute the employee-directors appeared, the chairman believed that board discussions were no longer confidential. On a board where many EDs were also union representatives, he couldn't help but notice that controversial plans to transfer production from Germany to a low-cost country – a measure that would involve large-scale job losses – kept leaking to the press. The board, he said, became dysfunctional almost overnight.

"Boards are often too large. I think that a board containing the relevant executive directors and four or five NEDs is generally sufficient."

An **Investment Association** (IA) team, led by Nigel Wilson, ceo of **Legal & General Group**, which earlier described the current structure as "broken," produced a damp squib when it reported its final conclusions on executive reward. The City grandees set out measures to help restore public confidence in their pay structures, but stopped short of endorsing the PM's proposal for binding shareholder votes on senior management salaries. The report acknowledged executive pay is difficult to justify, but did not set out how much directors should receive, either in absolute terms or compared to their wider workforce.

Centre chairman, Malcolm Hurlston, said: "Why, oh why, did the ABI - historically the Investment Protection Committee of the British Insurance Association - hand this key role over to the Investment Association, which has proved itself unsuitable?"

The report set out ten recommendations, including the use of pay ratios, but refused to back binding shareholder votes on executive pay, as suggested by the new prime minister. The IA's Executive Reward Working Group (ERWG) expressed caution about a binding vote on all executive reward deals and suggested that a half-way house solution could be to have a binding vote (the following year) in companies that failed to receive 75 percent approval over executive reward terms in any year.

The ERWG report called for more flexibility in the way executive bonuses are structured, away from the traditional long-term incentive plans (LTIPs), which pay out over three or five years in shares. "Growing complexity has contributed to poor alignment between executives, shareholders and the company, sometimes leading to levels of remuneration which are difficult to justify," it said.

"We need to restore public confidence in executive reward. Boardroom pay had trebled since 1998 during a period when the FTSE 100 had remained flat," said Wilson, and in the next 20 years "we'd like a much better outcome". The panel included David Tyler, chairman of **Sainsbury's**, and Edmund Truell, chairman of the strategic advisory board of **Lancashire and London Pensions Partnership**. Complicated bonus schemes meant executives did not know how they were being paid and set up secret spreadsheets to work out what their bonuses could be, said Truell. He advocated the use of restricted shares, which pay out at a predetermined point in the future.

Centre member **Deloitte** said of the report: "The three proposed structures – (Long Term Incentive Plans (LTIPs), deferred bonuses (into shares) and restricted share awards, without performance conditions) - provide sensible alternatives but we are unclear as to why share options have not been included as a potentially useful structure. Rather than giving individuals the full value of the shares, only receiving value where the share price has risen can create better alignment with shareholders. We welcome the focus on the use of discretion to adjust payouts, both up and down, where vesting formulae result in payouts which are not considered appropriate and we believe that encouraging remuneration committees and shareholders to accept this as a fundamental part of the remuneration process is the right approach.

"We agree that the disclosure around the target setting process and the retrospective targets on which the bonus was based, while generally much better, could still be improved. We continue to believe that there needs to be more rigour in the target setting process and more scrutiny by investors once the targets are disclosed.

"On the issue of quantum, while this was not part of the remit of the working group, the report includes the recommendation that the board should disclose the pay ratio between the ceo and the median employee pay. While this approach would provide a snapshot, we believe it may be too simplistic and we think that there may be broader ratios and qualitative disclosures that could illustrate how the remuneration spend is spread across the business.

"In respect of an annual binding vote on the remuneration report we believe there may be helpful alternatives such as the one raised in the report where a binding vote would be required in the following year after receiving less than 75 percent of votes in favour. But we also believe that we need an increased focus on the responsibilities of investors to ensure that they exercise the voting powers they already have in respect of the vote on policy and the ability to vote against the re-election of remuneration committee members. Investors should at a minimum publish their voting policies and votes and ensure that they respond to shareholders in a timely manner. In our view this would also support the changes recommended in this report.

"We note the recent proposals from the new Prime Minister. While the recommendations in this report support some of these proposals, we consider that the issues of inequality and the wider considerations of corporate governance and social responsibility, raised by Theresa May, will require solutions based on a broader perspective and a more holistic approach."

Centre member **Linklaters** said: "The main message from the ERWG report is flexibility. Companies should choose a remuneration structure which most suits their business needs and strategy. LTIPs with their often complex performance conditions may not be appropriate. They could be replaced, for example, with a restricted shares structure which does not have performance conditions, but aims to align shareholders' and directors' interests through shareholding. As there would be more certainty of receiving these shares, far fewer should be awarded, and an initial discount rate of 50 percent is suggested. In this way, the concerns relating to quantum would also be addressed." Linklaters' client alert about the report was revealing. It said simply: "Companies given free rein on executive pay design."

By contrast, the ERWG's earlier interim report had noted almost universal dissatisfaction with the current set up and sought to address both the issue of the quantum of pay and the complexity of the schemes, said **Mr McVeigh**. “We believe reductions in both are needed. In every company’s annual report, page after turgid page pay is filled with the detail of the ceo’s pay metrics. Twenty years ago the pay of the **Tesco** chairman Iain MacLaurin, in my opinion the most successful quoted-sector businessman of the modern era, covered a single paragraph. In recent years, pay levels and their complexity have risen hand in hand. The recipients apparently claim to be confused and argue that the uncertainty of schemes, stretching as they do often a fair distance into a future they can only in part control, means that higher sums are needed to offset this lack of predictability. To our minds if candidates struggle with taking the longer view they shouldn’t apply.”

“While there is no single answer that suits every company, many fund managers in principle like the notion of restricted shares held in trust for the ceo on the basis of annual delivery,” added McVeigh. “It is up to the board to make sure that the business is being run with an eye on the long term and that the system is not being gamed to maximise annual payments. Putting in place an effective remuneration policy isn’t easy, but that is why we have boards to mull over these complex matters and to deliver on such issues.”

He warned: “If investment firms, along with the rest of the City, don’t get their house in order over executive pay very quickly, employee-directors may well become a reality, marking unwelcome interference in the shareholders’ right to appoint their own boards freely.”

Joe Kaeser, ceo of engineering multinational **Siemens**, whose supervisory board consists of 50 percent employee representatives, said: “In Germany we’ve seen companies where workers’ representatives thought they co-managed the company – that obviously is a bit too much ... You need to get used to it but if it’s being practised well it has its benefits. A board member needs to act in the best interests of [his or her] company no matter which region they are from. So if you have workers’ representatives that are hypothetically from the UK, they also need to act in the best interests of the company if [the issue] is about job cuts in the UK and creating new jobs in China because demand has shifted. This typically puts quite a strain on the workers’ representatives.”

Ashley Hamilton Claxton corporate governance manager for **Royal London Asset Management**, said: “The 2016 shareholder revolt began over Bob Dudley’s pay package at the **BP** agm and has continued most recently with **Ladbrokes** and **Man Group** receiving substantial votes against their executive pay packages. Tension has been building for some time between companies and shareholders and the vote results we are seeing are the result of a few key trends at play.

“First, financial performance overall in 2015 was not great. This was particularly true in the commodities sector, but is the case for many others. At the same time, companies have been privately asking their shareholders for permission to increase executive pay packages. We have received dozens of requests over the past year from companies seeking to increase either base salaries, annual bonuses or long-term incentive schemes, known as LTIPs. Some companies have even proposed increasing all three. The story in each case is similar. Boards perceive their executives are underpaid relative to their peers, increases have been modest or non-existent since the recession, and the boards feel they need to “catch up” or risk a resignation. Only one out of 31 companies that wrote to us in the last 18 months was actually proposing to reduce executive pay.

In some cases the increases were warranted; for example where the company had materially grown in size or pay had truly not kept pace with the market. But in our view, many companies simply did not have a justifiable case for proposing large increases, yet many of them went ahead with them anyway.

“The second trend is an increasing scepticism among many City investors about whether the current model of remuneration is fit for purpose. Royal London Asset Management has been voting against pay schemes that it considers too complex for several years. While there are some legitimate uses for consultants, over-reliance on their advice and their mathematical pay models can lead to disastrous results if they are not coupled with a healthy dose of director scrutiny and discretion,” said Hamilton Claxton.

“Third, there is a growing unease with the pace at which executive pay has risen in comparison with that of the average worker and pension saver. Although many companies are now astute enough to limit executive salary increases to an amount commensurate with their wider workforce, bonuses and LTIPs continue to go up. Meanwhile, executive pensions provide a cash top-up of 25 to 30 percent above base salary for many.

“We are not afraid to pay well for exceptional performance, but one cannot make decisions about executive pay in a social vacuum and it is hard to ignore or discount the growing concerns about pay inequality, particularly in light of recent lacklustre results.

“The final trend is the looming triennial vote on remuneration policy, which for many companies will happen next year. In the UK, shareholders get a binding vote on pay policy which takes place every three years. So unlike most of the votes in 2016 which were annual advisory votes, next year’s votes must receive at least 50 percent support to pass. Failure to receive majority support from shareholders will send boards back to the drawing board to find more acceptable pay schemes. Arguably, the discontent shown by investors this year serves as a warning shot to directors ahead of next year’s votes.

“Despite an increase in public activity, Royal London Asset Management’s approach to voting this year remains consistent with previous years. We have been voting against some of the most controversial pay packages for several years now, including at **BP** and **Reckitt Benckiser**. What's different this year is that we are increasingly being joined by our peers. This is very much welcomed."

However, as investors become more willing to vote against executive pay packages, boards may, in turn, become more immune to receiving high votes against. A 20 percent vote against a pay package was once considered a major embarrassment. The change in rhetoric from directors is a particular concern, as they increasingly take a 'glass half full' approach, emphasising that 80 percent of shareholder support is a sign of success, not failure. "They certainly weren't saying this in 2012, and I fear that wider shareholder and public angst is increasingly being dismissed by some as a minority view," added Hamilton Claxton.

Even though this year's votes are not binding and many of the pay packages being rejected have already been paid, boards are not yet out of the woods.

Companies and their shareholders must respond to society's resentment of high pay in big business or face a clampdown by government, one of the UK's leading pay consultancies warned: "We need to find a way to answer public concern about executive pay or matters will be taken out of our hands," said **Tom Gosling**, partner at Centre member **PwC**.

He said the public wanted shareholders to be the instrument to control executive pay schemes and they should do more to press the issue. But in its advice to companies and their investors, PwC warned that Mrs May's core plan to make pay votes binding could backfire. "Shareholders don't want more votes and may be less inclined to cast a binding vote against a pay proposal than they would an advisory vote," the report, entitled *Time to Listen*, said. Investors would be inundated with requests for consultation over pay from companies worried about the issue.

Three-quarters of the general public says inappropriate executive pay makes them angry, according to recent polling by PwC. "Companies can't ignore what the public thinks on pay," said Mr Gosling. "Executive pay is a major source of public distrust in business which is damaging business's licence to operate."

Reflecting a trend across parts of the western world, some of Britain's biggest companies have been at the centre of executive pay controversies in recent months. Shareholders voted against some packages, most notoriously the £13m deal for BP boss Bob Dudley after a dreadful year for the company, though the vote was non-binding and Mr Dudley's remuneration was not changed. Critics of boardroom excess gain political support as growth in US rewards outpaces Europe.

PwC's research suggests the public would be furious if they were aware of the real level of ceo pay relative to workers' pay. According to its survey, more than 60 percent of people believe ceos should earn no more than 20 times more than their average employees. The real multiple averages more than 180 times, according to the left-leaning **High Pay Centre**, up from less than 50 times 20 years ago.

PwC said remuneration committees should focus on the wages of low-paid workers as well as executive pay. "Companies should develop a set of fair pay principles [to] address pay at the bottom as much as pay at the top," said Mr Gosling.

JPMorgan ceo Jamie Dimon announced that bank staff on the lowest wages would see their pay raised from about $10 an hour to at least $12. That compares to Mr Dimon's own pay of $28m last year — or about $8,000 an hour, assuming a 70-hour week. "Wages for many Americans have gone nowhere for too long," Mr Dimon wrote in an article for the *New York Times.*

Mrs May's speech echoed corporate responsibility themes championed by the former Labour leader Ed Miliband during the 2015 election campaign and came after the Brexit result that many viewed as a protest over inequality in the UK.

Even the **Bank of America** had warned clients that the gulf between rich and poor could spark a further anti-establishment backlash.

Sir Mike Rake, the chairman of **BT** and **Worldpay**, hinted that the attitude of business leaders might have changed since last year's general election. "If you'd asked me 18 months ago I would have said business leaders were not at all receptive but there is now a huge awareness among people I speak to, who are mainly in the FTSE 100, that we need to do something about this gap," he said. "It was shown in stereophonic sound in the referendum that there is a lack of trust in the establishment, politicians and business."

Tim Martin, chairman and founder of pubs chain **JD Wetherspoon**, added: "The current system is up the spout. It's far too much of an old boys' network. Boards need to be more aware of what consumers think and in most businesses like ours you need to be aware of what your employees think. Instinctively yes [it could work] as long as it doesn't become a muddle. What has worked in Britain is we have got relatively high employment. What hasn't worked in France [where they have employee representatives on boards] is moving to the other end of the spectrum and making the system too employer unfriendly."

First Group, which has faced several shareholder revolts over executive pay in recent years, can claim to be a step ahead of Mrs May in one respect. "In most of First Group's UK businesses, bus and trains, an employee director chosen by the workforce is on the board, up to and including the group plc board – it's a well-established practice," a company spokesman said. "We've found it helpful to have an employees' voice on the board."

An example of 'excessive' executive reward of the type which Mrs May decries came in the revelation that **Helge Lund**, the former ceo of **BG,** was paid £5.5m for his 11-month stint at the oil & gas exploration and production company, which was taken over by **Shell** earlier this year. The figure for the short period he worked for BG in 2015 does not include £9.7m in shares he received in February this year, when the takeover took place after shareholder approval – triggering the share payout from the BG scheme. The £5.5m figure was revealed in BG's annual report, which showed that the Norwegian – who joined BG in March 2015 just weeks before Shell tabled its £47bn bid – had his £1.4m salary topped up with other payments for 2015. The report showed that he received a relocation allowance of £906,000 – almost double the £480,000 previously announced by the company. In addition, Lund received a £2.5m annual bonus and a £402,000 contribution to his pension. Lund was hired from Norway's **Statoil** to overhaul BG, but his tenure there was dominated by his pay. The company cut his signing-on deal to £10.6m rather than £12m, even before the Shell deal had been announced, to try to head off a row with shareholders, but the row intensified when BG agreed to be bought by Shell only weeks after he joined.

Sir John Hood, the non-executive director who chaired the remuneration committee, said in the annual report that when pay deals were considered for 2015, the committee had taken into account the "unusually long period" between the Shell deal being announced and it being completed. Hood wrote: "2015 was Helge Lund's first year as ceo and during a period of prolonged uncertainty for BG and its employees, Mr Lund continued to lead high standards of safety, project delivery and operational performance, while also maintaining staff morale. Despite the very challenging external environment, BG delivered strongly in all these areas." Under Mr Lund's leadership, BG grew production by 16 percent on 2014, Hood added.

Lund received 951,138 BG shares, worth £9.7m, when the deal was completed in February, Shell said. This includes three tranches: 733,954 shares of a £1.1m share award he received in May 2015, then 168,208 from another 756,938 award of shares he received in May and 48,976 he received to buy him out of surrendered share awards from his previous employer.

Binding shareholder pay vote in France

On June 14, the **French National Assembly** adopted a bill making mandatory and binding the annual shareholder vote on the remuneration and benefits of mds of listed companies, said the ratings agency **Proxinvest**. "While the Senate could possibly scale down this law, we consider it appropriate for the sound governance of corporations. The controversy over the remuneration of the **Renault** chairman & ceo Carlos Ghosn demonstrated the inadequacy of current French governance 'say on pay' practices to regulate executive compensation. Following the 54 percent vote against the opaque Ghosn €15m annual compensation, the Board decided to maintain his reward at this level – which some considered outrageous.

"We welcome the legislative initiative restoring the ultimate shareholders authority over compensation and benefits granted to directors, which should enable to better establish executive compensation on merit and the actual performance, to limit the granting of hidden or unjustifiable benefits, and to ensure social cohesion by a better share of the value created. The increase in top executive remuneration has not experienced a respite, despite the financial crisis and the individual granted amounts continue to surprise."

According to Proxinvest, average compensation of ceos of CAC 40 companies exceeded in 2014 the threshold of €4m (a rise of six percent) without including company pension contributions." The board of Renault "took note of the negative opinion of shareholders" but then "approved the continuation of the compensation agreed for the ceo for 2015". This triggered a sharp public controversy.

The French National Assembly has since adopted a new Article of the Commercial Code, requiring ceo pay to be annually subject to shareholders approval. The relevant resolution will put to the vote a report that will include details the fixed remuneration, variable or performance-related items of individuals and the criteria for their determination. Moreover, with the exception of fixed remuneration, no payment will be made prior to approval by the agm and whenever shareholders do not approve the resolution, the board shall submit a new proposal at the next agm.

Leading Eso Cabinet friend lost in reshuffle

Esops' strongest supporter in David Cameron's government, **Rt Hon Sajid Javid MP**, has been shunted sideways in the recent Mrs May reshuffle and is no longer in a position to promote further employee share ownership initiatives. The ex business secretary has swapped jobs with communities secretary **Rt Hon Greg Clark MP,** who to date has displayed no particular interest in employee share ownership during his time in parliament.

Mr Javid won Centre plaudits for insisting – against internal Treasury opposition – that postal workers should get a further one percent of **Royal Mail**'s total equity when the last of the taxpayers' holding in RM was sold into the private sector. About 140,000 RM employees now hold 12.5 percent of the equity via a Share Incentive Plan – the largest all-employee share scheme in the UK.

However, Eso supporter **Rt Hon David Gauke MP** won promotion to Cabinet rank – with his appointment as **chief secretary to the Treasury**, the second most important Treasury post after the new **chancellor of the exchequer, Rt Hon Philip Hammond MP**. Mr Gauke, guest of honour at the Centre's 2008 awards dinner, was financial secretary to the treasury in the Cameron government.

He was at odds with the Centre recently when he defended the government's decision to withdraw the HMRC valuation service for non tax-approved share schemes. Mr Gauke explained: "The government has not withdrawn the valuation checking service for the tax-advantaged employee share schemes. However, HMRC has withdrawn other checks for non-tax advantaged schemes as, in the majority of cases, acceptable valuations were submitted. Therefore, the valuation service added no value and is seen as unnecessary." Since then the Centre has worked closely with HMRC on tactical alleviation.

The remaining Treasury ministerial appointments in Theresa May's government were **financial secretary**, **Jane Ellison MP**; **economic secretary**, formerly with John Lewis, **Simon Kirby MP**; and **commercial secretary**, **Lord O'Neill of Gatley**.

The appointment of **Margot James** as **small business minister** has been warmly welcomed by our allies in the sector, who know her well. From her track record it looks like good news for esops too, and especially the EOT. Encouragingly she told her local paper the Stourbridge News "I shall do all I can to support businesses and employees in my new role".

CENTRE BREXIT SYMPOSIUM

The Centre has assembled an impressive line-up of employee share scheme industry experts to deliver topic presentations during its inaugural **British Isles, Brexit and Shareholder Democracy** symposium, starting **Wednesday November 23** at White & Case's City HQ in Old Broad Street.

Speakers for this event include: **Nicholas Greenacre** of hosts, lawyers **White & Case**; **Graham Ward-Thompson** of **Howells**; **Sara Cohen** of **Lewis Silkin**; **Juliette Graham** of **Linklaters**; **Amanda Flint** of **Mercer**; **Stephen Woodhouse** of **Pett Franklin**; **Lynette Jacobs** of **Pinsent Masons**; and **Jeremy Mindell** of **Primondell**; **Peter Parry** of the **UK Shareholders Association** will be one of a number of guest speakers. Centre chairman **Malcolm Hurlston** will welcome delegates and introduce the symposium, setting out some of the main themes and welcoming the "third golden age" for esops.

It's not too late to register interest in speaking at this event, particularly if you can organise and present a double-header client case history, update delegates on the administration marketplace or explain the corporate governance issues of cross-border all-employee equity plans. Trustee speakers are sought too, as we will devote a segment of the programme to the future of EBTs and Eso in the Crown Dependencies. Speaker slots are excellent value – just **£250 + VAT** per person, as compared to **£395 + VAT** for practitioner delegate places. Please contact Centre international director **Fred Hackworth** at fhackworth@esopcentre.com asap if you would like to speak and have a topic in mind. You can review the draft programme to date – already formidable - in the event brochure.

The UK share schemes industry must come to terms with three distinct phases in the process of extracting ourselves from the EU, namely: the '*as you were*' phase, in which we are, where nothing much has happened yet; secondly, the triggering of Article 50, which starts the leaving process and finally the new timeline from the point at which the UK actually quits the EU, possibly in early or mid 2019. *Naturally, companies and their advisers need to know what parameters, rules and regulations will operate during each phase of the process. Our speakers will aim to impart what is most likely to happen at each juncture.*

The executive reward segment of this event will be the most comprehensive and detailed the Centre has ever mounted. We will devote five or even six slots to the '*executive compensation crisis,'* which has been ratcheted up by new PM Theresa May (see lead story) who appears to see the City as the Augean Stables Lite, in need of a massive clean-out, not least the 'excessive' executive reward packages.

One of the key issues to be discussed at the symposium is the threat Brexit may pose to UK companies currently exempt from having to apply the Prospectus Directive obligations when making equity awards to employees who work on the European mainland. UK and EU registered companies and companies with shares admitted to trading on an EU regulated market are able to avoid having to file expensive prospectuses explaining employee share plan offerings - by complying with the employee share plan exemption or ensuring that their offering falls within a small offering exemption (of fewer than 150 people in each EEA state).

In addition, in common with many other EU member states, the UK takes the view that conditional share awards under long term incentive plans and Restricted Stock Units which are offered free of payment are not subject to the Directive.

The present regime has the biggest impact on non UK and non EU issuers who operate plans, such as employee stock purchase plans, which are considered to be public offerings and therefore require a prospectus. Where a prospectus is required, companies are able to file one prospectus in this home EU member state and 'passport' the prospectus to any other EU state in which the offering qualifies as a public offering.

"Quite what will happen to those rules when the UK leaves the EU is a matter of conjecture," said Jeremy Edwards of Baker & McKenzie: "One possibility is that the UK will 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, it is possible that the UK would continue to have legislation that replicated existing exemptions.

"Another route is that the UK simply enacts a blanket employee share plan exemption from prospectus requirements, but for UK-listed companies which are not listed on another EU exchange, this will not avoid the potential need for a prospectus in other EU member states (unless the EU specifically allows for this)," warned Mr Edwards.

Another issue to be tackled is data privacy. Operating share plans usually involves the transfer of sensitive personal data about employees between companies and administrators. The EU's new data protection law, the General Data Protection Regulation, is already in play and companies have until May 25 2018 to make changes to ensure they are compliant. After Brexit, it would be for the UK effectively to adopt the GDPR or for the EU to determine that the UK otherwise imposes adequate protection for the storage and transfer of data relating to EU employees. The alternative routes of model clauses (which are currently being challenged in the European Court of Justice) for express, informed consent from employees would bring extra administrative burdens.

Meanwhile, **Jersey** and **Guernsey** both released statements about the result of the EU referendum. These emphasised that access for their funds to the EU market is through existing third country routes, since neither is a member state or entitled to derivative benefits under the UK's membership. Guernsey's chief minister, Deputy **Gavin St Pier**, believes the Island is a 'safe haven' for financial services following the UK's vote to leave the EU. Deputy St Pier, a former member of the Esop Centre steering committee, was updating members of the island's parliament - the States of Guernsey - on the progress Guernsey had made since the Brexit vote. A proposition was then passed to enable the island's policy and resources committee, which Deputy St Pier leads, to negotiate with the UK Government in order to: protect Guernsey's interests in the UK exit agreement; replace Protocol 3; protect its constitutional relationship with the UK and look at, and take advantage of, new trading relationship opportunities.

Deputy St Pier, together with the chief ministers of the other Crown Dependencies, have written to the UK PM to highlight what the islands are seeking in terms of trading relationships. Lord Faulks, minister of state at the ministry of Justice, wished to reassure Guernsey that he and the ministry would ensure that Guernsey's position was properly represented: "He [Lord Faulks] regarded this as part of his role and that of his department. He emphasised the importance of recognising and preserving our constitutional position," said Deputy St Pier. "Officers are working closely with the UK government and our Crown Dependency counterparts. The PM has confirmed that the Crown Dependencies would need to be consulted - and this early recognition of our position is to be welcomed."

A call was made to Scotland's first minister, Nicola Sturgeon, who wants to maintain dialogue with Guernsey through the exit process.

"We have much better connections with Whitehall, Westminster, Brussels and other jurisdictions in 2016 than we had in 1972 [when UK joined the EEC]. We have invested in our relationships, which will assist us in the coming weeks, months and years," said Deputy St Pier. "I am confident we will continue to be seen for what we are; an oasis of stability - a safe haven. We are a safe haven for financial services - in or out of the EU - and we are a safe haven physically for those who want to relocate here - or even just holiday here in peace and quiet."

Guernsey Finance ceo Dominic Wheatley said: "It is important that the island's finance sector monitors developments closely, while recognising that even though Protocol 3 makes us part of the Customs Union and within the Single Market for the purposes of trade in goods, in the case of most services, such as financial services, we were already treated as a third country and that position has not changed as a result of Brexit. As Deputy St Pier says, Guernsey should be seen as an island of stability for financial services during this period of uncertainty. We already have an established third country relationship with the EU due to the fact that over a considerable number of years Guernsey has been able to demonstrate equivalence to EU standards and there is no reason to suggest that existing market access rights will be impacted."

Chairman recommends EOT to Manx trustees

The new UK Employee Ownership Trust offers an opportunity to Manx trustees, according to **Malcolm Hurlston**, chairman of the Esop Centre. He was talking to members of the **Society of Trust and Estates Practitioners** in Douglas on July 20. The EOT, enacted in 2014 by the former coalition government, was proving unexpectedly popular and increased the market for trustees in the Crown Dependencies. "For the first time in the UK," Mr Hurlston told trustees, "we have legislation which puts the business owner first. There can be no rapid rise in employee ownership without a happy seller."

Turning to the new UK government, he forecast a third golden era for employee ownership with policy driven from 10 Downing Street, as in the days of Margaret Thatcher and Gordon Brown. "Theresa May has an equality agenda and, under her, Treasury and Business will work well together," he told trustees. "The PM's drive to improve business scrutiny by opening up companies to a wider range of influences could herald the dawn of a new golden age for employee share ownership. We believe that encouraging workers to buy shares in their company could help Theresa May achieve her goal of widening the narrow social and professional circles that she believes run British business. Mr Hurlston added: "Although there are some two million employees in the UK who hold shares or options through a tax-advantaged share scheme, the responsibility for promoting Eso falls between the Treasury and the Department for Business. Now with the impetus for more business scrutiny coming from Number 10, employee share ownership could be entering a new golden age. Broad-based employee share ownership means that all employees in a company – from the boardroom to the shop floor – are able, and indeed incentivised, to acquire shares in the company for which they work. We believe that this is good for employees, companies and the economy as a whole – a view supported by a wide range of policymakers, business leaders and ordinary employees. Now is an exciting time for employee share ownership, and the Esop Centre is committed to building on the progress of the past 30 years and helping millions more employees become shareholders in their companies."

Disguised remuneration deadline extended

HM Revenue & Customs has extended the period for investors to escape being taxed on investment gains from 'disguised remuneration' schemes — typically in the form of interest-free loans from corporate trusts — by four months to March 31 2017, said *The Financial Times*. Under the new terms, beneficiaries of employee benefit trusts can claim relief for any investments gains until March next year. The window to settle the taxation issues closed last year. HMRC expects to claw back up to £2.5bn from such trusts over the next five years. The trusts were set up by companies seeking to pay staff through a structure — held either in the UK or offshore — that allowed employees to minimise or avoid income tax and NI contributions. The company would pay money into the trust, which in turn would make loans to key members of staff. These were then taxed as benefits in kind rather than salary. George Osborne announced a crackdown as part of a £12bn raft of anti-avoidance measures in his March budget. The former chancellor said the measures were designed to "stop tax evasion, prevent tax avoidance and tackle imbalances in the system". Paul Noble, tax director at Centre member **Pinsent Masons**, said the move by HMRC to extend the relief period represented "a bit of a carrot for people who had EBT arrangements". He added: "If you had funds in an EBT and you hadn't taken them, [this means you will only be taxed] on the original contributions — not on the roll up of investments." Under the terms of the Revenue's crackdown, all outstanding loans from must be repaid in full by **April 2019**. HMRC said it had extended the period to allow more people to come forward.

CENTRE CONFERENCES & EVENTS

Share schemes for SMEs: September 16

This year's employee share schemes for SMEs conference, jointly organised by the Esop Centre with the **Institute of Directors**, will be held at the IoD's Pall Mall HQ on **Friday September 16.** This one-day event is designed for businesses wanting to start or develop employee ownership.

Speakers include Stephen Woodhouse of **Pett Franklin**, Robert Postlethwaite of **Postlethwaite Solicitors**, David Craddock of **David Craddock Consultancy Services**, Colin Kendon of **Bird & Bird**, William Franklin of **Pett Franklin**, Garry Karch of **RM2 Corporate Finance** and Graham Muir of **Nabarro**.

The programme ranges from EOTs, EMIs and EMI alternatives through to share valuation and succession planning. The beginner and advanced panel sessions will involve discussions on the implications of Brexit for SME share schemes.

Tickets for Centre and IoD members cost £385 + VAT, non-members £485 + VAT. Centre members should email Daniel Helen at:

events@esopcentre.com or call 020 7239 4971 to obtain tickets at the preferential rate. IoD and non-members should book online on the IoD website.

Guernsey shares schemes and trustees: October 7

The annual Guernsey share schemes and trustees conference, organised jointly by the Esop Centre and **STEP Guernsey,** 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, is set to 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**. **Malcolm Hurlston** chairman of **The Esop Centre** 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 with Alison MacKrill and Elaine Graham will discuss why the Channel Islands are still the jurisdictions of choice.

Tickets for Centre members cost £350, non-members £450. Book by Wednesday August 31 to secure one of these early bird discounts: 50 percent off a third delegate; or ten percent off your total reservation (as long as the payment is received by above date). To register, please email events@esopcentre.com or call 020 7239 4971.

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 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, early bookings are recommended. A table of ten costs £1,800 + VAT. Individual tickets cost £195 + VAT for Centre members and £270 + VAT for non-members. To register, please email events@esopcentre.com or call 020 7239 4971.

There is still time to make submissions for the awards themselves. The categories this year include:

- Best all-employee share plan:
  - More than 1,500 employees
  - Fewer than 1,500 employees
- Best international all-employee share plan
- Best all-employee share plan communications
- Best use of video in share plan communications
- Best use of social media in share plan communications
- Best financial education of employees

- Best promotion of share plans as long-term investment
- Best innovation in share plan administration
- Best use of share plan voting rights to boost employee engagement

Visit the Esop Centre website to submit your nominations.

COMPANIES

Management and staff at **Goodbody Stockbrokers** have doubled their stake in the firm to 49 percent since 2011, when it was taken over by financial services firm Fexco, reported *The Irish Times.* They were helped in this by a surge in share trading and fees from corporate deals last year. Goodbody, led by md Roy Barrett, initially stood little chance of reaching incentive targets as it remained loss-making in the early years following its takeover by Co Kerry-based Fexco. However, a subsequent recovery in the Irish stock market and corporate transactions over the past few years, especially in 2015, saw staff achieve the maximum stake target set under the deal, according to sources close to the matter. Fexco's stake in Goodbody has fallen to 51 percent from 75 percent at the time of its €24m purchase from AIB in January 2011. In that time the value of the stockbroking firm, which now employs 320 people, has more than quadrupled, sources said.

Around 2,000 **Sports Direct** employees will not get their staff shares pay-out this year after annual profits tumbled 15 percent, as the retailer continued to fight reputational damage relating to allegations of poor staff working conditions. Ceo Dave Forsey, who waived his £3.7m bonus, said that Sports Direct's earnings of £381m failed to meet a £420m target for the employee share scheme pay-out. The company was working urgently to devise a replacement incentive scheme**,** he said. Sports Direct's share scheme has delivered major windfalls for its staff in recent years; in 2013 a cleaner at its Shirebrook site collected a £48,000 pay-out. The retailer posted a pre-tax profit for the year to April 24 of £361.8m, but the Sports Direct shares bonus scheme was set to kick in if profit hit a target of £420m for the year to April 2016. That target had been lowered already for the year from £480m as part of a four-year scheme set out in 2015. It is one of several attached to a new four-year scheme for 2,000 employees as well as executives, but excludes founder Mike Ashley. He admitted to MPs that Sports Direct had paid some of its staff below the hourly minimum wage due to lengthy search processes, but defended the company's track record as a good employer based on the thousands of pounds in bonuses it regularly handed to staff.

Global energy company **Total**, which employs 96,000 people, has improved its employee shareholder offer. From next year, employees will be given the option to purchase shares with a discount of up to 20 percent every year, instead of every two to three years. The oil major will match the first five shares purchased by an employee with an additional five free shares. Total is increasing the number of performance shares awarded this year by 20 percent compared to 2015. More than 10,000 non-executive employees will receive performance shares in 2016. The annual renewal rate is 40 percent of recipients, with the first 150 shares awarded without conditions. The performance shares vest after three years and must be held for an additional two years after vesting. The amendments were approved by the organisation's board of directors last month Total's employee shareholders hold almost five percent of its capital. Patrick Pouyanne, chairman and ceo at Total, said: "Developing employee share ownership is, in our view, the best response to the debate regarding shareholder return and employee compensation. It aligns the interests of both with the collective interests of the company. Total benefits from a stable core of shareholders made up of employees, who are represented on the board of directors by a member elected from among those proposed by the employees."

MOVERS AND SHAKERS

Bedell Cristin partner, **Zillah Howard**, has been named 'Best in Offshore' for the fifth consecutive year in the Europe Women in Business Law Awards organised by *Euromoney Legal Media Group*. The awards, which were presented at a gala ceremony in London, attended by some of Europe's leading female lawyers, celebrate the achievement of women in the European legal sector and those firms that set a high standard by their female-friendly employment practices. Zillah, who has 25 years' experience in international private client work, is a member of three key industry working parties which are helping to enhance Jersey's profile in the global private client sector for trusts, foundations and charities law.

Centre member **Global Shares** has appointed industry veteran **Charles Cryer** as group fd & md, share registration. Mr Cryer, who will join the company in the autumn, brings 20 years' experience in financial and corporate services to the role, in particular his leadership of share registry services. Before joining Global Shares, he was ceo of Capita Registrars for six years and latterly as divisional fd of Capita Asset Services. He is a chartered accountant and has worked for Charterhouse Securities and ING Barings. As group fd, Mr Cryer will closely support Global Shares' ceo, **Tim Houstoun**, in leading the business during its rapid growth and expansion. "We are delighted to welcome Charles to the Global Shares team," said Mr Houstoun. "His unique experience within the share registry industry, coupled with his experience as a divisional fd within a FTSE 100 company, makes him a valuable addition."

Congratulations to man-about-town, **Martin Osborne-Shaw**, who has landed the new post of head of EMEA (Europe, the Middle East & Africa) Client Service Delivery - at Centre member **Solium**, which provides cloud-enabled services for global equity-based incentive plans administration, financial reporting and compliance. Martin, who joined the company in mid July, brings with him 25 years of experience in the share plan industry. Before joining Solium, Martin co-founded Killik Employee Services in 2000, which was acquired by **Equiniti** in 2013. Brian Craig, Solium's md and UK ceo, said: "I am excited Martin is joining the business and bringing his experience and talents to Solium, as we expand our presence in Europe. He will play an important role in leading our efforts in providing efficient solutions that meet the unique needs of our customers, achieved through Solium's delivery of a unique combination of world-class service and best-of-breed technology. He is a strong leader and has an impressive track record of managing high performing teams."

Esop reliefs worth almost £1bn a year

Treasury support for employee share schemes, including both income tax and NICs relief, was worth £925m in the year to April 5 , said the new **chief secretary to the Treasury**, **Rt Hon David Gauke MP** in a parliamentary written answer. The government's most recent assessment of the cost of the tax-advantaged employee share schemes to the Exchequer is in the table below.

The government is under pressure to sharpen the incentives for foreign investment into Ireland following the Brexit vote and the subsequent pledge by the UK government to slash corporation tax. The chamber told the department that changes to the taxation of share option schemes, along with other changes to the income tax code, would "significantly enhance" Ireland's offering to foreign investors. The chamber warned that the 12.5 percent corporation tax rate is "by no means sufficient" to ensure the protection of investment flows.

Incentivised share option schemes are a favoured method for US multinationals and major listed companies to reward senior executives. Multinationals, as well as smaller companies in the tech industry and other sectors, also routinely grant cheap share options to lower-ranked staff. Currently, standard corporate share incentive schemes are usually taxed at marginal income tax rates as soon as the shares are granted.

This means that, for top earners, they are hit with a tax bill of 52 percent on the discount given on the share value. In practice, this means that they usually sell some of the shares as soon as they get them, in order to pay the tax bill.

	Forecast cost of Income Tax relief (2015-16)	Forecast cost of National Insurance relief (2015-16)
Share Incentive Plan	£220 million	£165 million
Save As You Earn	£180 million	£140 million
Enterprise Management Incentives	£70 million	£40 million
Company Share Option Plan	£70 million	£40 million

Reduce tax on share options, Irish government told

US multinationals in Ireland are pressing the government to reduce the tax due on share options awarded to company executives in the upcoming budget, in order to boost foreign investment, said *The Irish Times.* The American Chamber of Commerce in Ireland, which represents employers such as **Google** and **Intel,** told the Department of Finance that "senior leaders in our member companies are deeply concerned" about Irish tax levels. "[They] are uniformly of the view that reforms can be made within the income tax code to improve the current competitive position," said the chamber in a submission which was made as part of a public consultation on the taxation of share schemes. Feargal O'Rourke, the managing partner of Centre member **PwC** and a board member of the chamber and tax adviser to many of its members, said the drive for share option tax cuts would form a central plank of its formal budget submission.

There are three Irish Revenue approved share schemes, including share savings schemes and employee share ownership trusts. The lower capital gains tax rate of 33 percent applies to these approved schemes, but only when the shares are sold and not as soon as they are awarded. However, US multinationals usually operate conventional corporate share option schemes that fall outside the Revenue approved schemes, especially for top executives.

The chamber has made four suggestions to the government on the issue. First, it said the state should change the rules from income tax rates on acquisition to the cgt rate on disposal for all share payments. Failing this, it said, PRSI and Universal Social Charge should not be paid on non-approved share awards. Thirdly, it wants the tax-free caps on certain share award schemes boosted significantly beyond current bands. Finally, it wants social security discounts to employers who pay share awards maintained. The chamber said "if Ireland is to remain ahead of the pack" it must position itself "as the global location of choice" for talent.

IA revises remuneration principles

The Investment Association's Principles of Remuneration (formerly known as the ABI remuneration guidelines) state that: "The rules of a scheme should provide that share or option awards should normally be granted within a 42 day period following the publication of the company's results." However, given the change in definition of **closed periods** in the **Market Abuse Regulation** and the ongoing uncertainty regarding the interpretation of a closed period for those purposes, the Association has decided to amend this provision to state: "The rules of a scheme should provide that share or option awards should normally be granted within a 42 day period immediately following the end of the closed period under MAR (EU) 596/2016."

There was some debate about the timing of closed periods, i.e. the periods in which PDMRs are prohibited from dealing in a company's shares (unless specific exemptions apply). In particular, there was a lack of clarity as to whether the hard-wired closed period should precede - either at publication of a company's annual report, or at publication of its preliminary results. The FCA has now obtained clarification from ESMA, confirming that the **closed period will be the 30-day period preceding the announcement of preliminary financial results** agreed by the management body, provided the announcement contains all the key information relating to the financial figures expected to be included in the year-end report, said **Deloitte**. In practice, companies may consider treating themselves as closed for longer periods, given that they are likely to have inside information from the end of the preceding financial year. A company's share dealing policy is not just about preventing market abuse; it should also ensure employees do not place themselves under suspicion of abusing inside information.

On June 30, the Prudential Regulation Authority noted that firms within the scope of the Remuneration Part of its Rulebook are expected to ensure that their remuneration policies, practices and procedures are clear and documented. To record those policies, practices and procedures, and assess their compliance with the requirements, firms should complete a Remuneration Policy Statement using the updated templates.

German executive-worker pay gap falls

Among Germany's biggest companies, the pay gap between the corner office and the cubicle remains colossal, though a little less so than before. In 2015, board members of the 30 companies listed on Germany's DAX stock index earned on average 50 times more than their employees. They received 54 times as much the year before.

These findings resulted from a study by investor association Deutsche Schutzvereinigung für Wertpapierbesitz (DSW) and experts from the Technical University of Munich. Last year, gross wages rose four percent while executive earnings dropped by 1.8 percent. The authors of the study largely attributed the latter change to two trends: the size of executive bonuses shrank as they became more truly tied to their company's success, and their base salaries weren't spiked as compensation. *Dieselgate* may have played a role - Volkswagen's former ceo Martin Winterkorn, who stepped down last September after US regulators revealed the carmaker's use of emissions test cheating devices in its diesel vehicles, was the DAX's highest-earning board member, and the only one to be earning over €10m per year.

The head of Stuttgart-based carmaker Daimler, Dieter Zetsche, now takes the top spot, raking in an annual remuneration of €8.5m VW's current ceo Matthias Müller is third on the list, earning €7.3m per year. The average pay of a German ceo of a company quoted on DAX is €5.1 m, putting them above their French colleagues, who average €4.7m, but below Swiss ceos, who average €6.8m. They all pale in comparison though to the top brass on the other side of the Atlantic. Ceos of US companies listed on the Dow Jones Industrial Average earn on average €16.4m.

USA

Arch Coal has agreed to waive $6m in incentive pay for top executives under an amended bankruptcy reorganisation plan supported by a number of its lenders. The concession by the owner of the West Elk Mine in Colorado comes as Arch, Peabody Energy and other coal companies have come under increasing criticism over the amount of money that has gone to executive pay at a time when they are taking actions including filing for bankruptcy, laying off miners and cutting retiree benefits. Arch Coal recently announced the layoffs of 80 miners at West Elk, the last mine still operating in the North Fork Valley. Arch Coal said it had reached a settlement with certain senior secured lenders and with an unsecured creditors committee, with a goal of facilitating a timely conclusion to its bankruptcy process. "We are sharply focused on emerging from this court-supervised process in an expeditious manner, and as a stronger and more nimble player well-equipped to compete in a rapidly evolving marketplace," Arch Coal chairman and ceo John Eaves said. Among the settlement provisions was the incentive-pay waiver, after the unsecured creditors committee reportedly had objected to the executives receiving that pay.

The Western Values Project said that as Arch Coal was going through the bankruptcy process earlier this year it had cut benefits for retired workers by $3m while approving an executive bonus package of $12m: "Why should taxpayers be on the hook for coal companies' mismanagement, ceos' excessive compensation and bonuses, and coal companies' Washington lobbyists?" Chris Saeger of the Western Values Project said in a statement. "Our current (federal coal) rules are outdated, and they amount to a large taxpayer investment in coal ceos, instead of the coal communities that need the investments." The nonprofit group Public Citizen recently wrote to the chief executive officers of Arch Coal, Peabody and Alpha Natural Resources, another bankrupt coal company, saying they should invest their bonuses into a trust fund for laid-off workers.

Take On Wall Street

Democrat Senator **Elizabeth Warren** helped launch a new coalition calling itself *Take On Wall Street*. The group includes lawmakers, labour leaders, as well as civil rights groups, community groups, and the organising giant **Move On**. It urges stricter laws governing the financial system. Operating on two principles — "No cheating, and no pushing the risks on taxpayers," - it's making five key demands: to break up the biggest banks; ensuring access to non-predatory banking products, including through the **US Post Office**; ending the carried interest tax loophole that allows hedge fund managers to use a tax break for investment income on the income they make at work; reining in executive bonuses and imposing a financial transaction tax (Tobin tax). Warren noted some achievements from the 2010 Dodd-Frank financial reform bill, particularly $10bn in consumer relief brought about by the Consumer Financial Protection Bureau, but she argued that things have to go further. In particular, she called for a reinstatement of a "21st century **Glass-Steagall**," a law that previously separated riskier investment banking activities from high-street commercial deposits.

Guernsey Hastings Bass stance disappoints trustees

Last year a decision by the Guernsey Court in the case of *HCS Trustees Ltd and another* v *Camperio Legal and Fiduciary Services Plc and another (unreported),* confirmed the availability of Hastings Bass relief in the Guernsey jurisdiction. This was an important and welcome decision for trustees, professional advisers and their clients, said lawyers **DAC Beachcroft**. However, the Guernsey court did not hand down a written judgment nor confirm the precise ambit of the Hastings Bass rule under Guernsey law, but it is believed that an application to set aside a transaction under Hastings Bass required a breach of fiduciary duty on the part of the trustee concerned. This differs from the position in Jersey, where the Trusts (Amendment No. 6) (Jersey) Law 2013 confirms the court's ability to provide discretionary relief where beneficiaries find themselves materially prejudiced by a trustee's decision. It is not necessary for the fiduciary to be shown to have been at fault. Moreover, the amendment has retrospective effect.

It had been expected that the long running case of *HMRC* v *Gresh* might provide further guidance about the application of Hastings Bass in Guernsey. However, that was not the case. Mr Gresh hoped to set aside a £1.4m distribution from his pension fund which had resulted in an unexpected tax liability of more than £500,000. The case was originally brought by Gresh based on the rule in Hastings Bass. In the interim, the cases of *Futter* v *Futter* and *Pitt* v *Hunt* progressed to the UK Supreme Court. Following the outcome of those cases, Gresh resubmitted his application and sought to invoke the equitable jurisdiction of the court to set aside a voluntary disposition on the grounds of mistake. His re-application was brought on the basis that the trustee of his pension scheme had made a mistake over the tax consequences of the distribution. He had received professional tax advice indicating that the distribution would be tax-free provided that it was not remitted to the UK. However, this advice (which was shared with the trustee) was incorrect and the distribution was subject to a 40 percent UK income tax liability.

The Guernsey court decided that the distribution should not be set aside on grounds of equitable mistake. In reaching this decision, it held that the legal test to be applied is that laid down by the UK Supreme Court in *Pitt* v *Holt* and the later decision of *Kennedy* v *Kennedy*. The court considered whether it would be "unconscionable" or "unfair or unjust" not to set aside the disposition taking into account the consequences of doing so (or, alternatively, of not doing so). The court concluded that it was not unconscionable that Mr Gresh should have to retain the proceeds of the distribution made by the trustee, noting that he was the only person affected by the mistake.

"In handing down this decision and setting a very firm boundary to attempts to obtain wide-ranging relief, the Guernsey court will have disappointed the island's large trustee community," said DAC Beachcroft. "The approach taken by the Guernsey court is significantly more restrictive than that of the Jersey court, which granted the relief sought in similar circumstances last year in the case the S Trust and the T Trust." The approach taken by the Jersey and Guernsey courts now appears to be markedly different (albeit that a reported decision on the precise scope of the Hastings Bass rule under Guernsey law is still awaited). "Given the relatively restrictive approach of the Guernsey courts to date though, parties may increasingly resort to professional negligence claims against their advisers in order to recover their losses," the lawyers added.

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