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it's our business

newspad of the Employee Share Ownership Centre

Clegg takes the lead on employee share ownership

Deputy PM Nick Clegg has seized the employee share ownership agenda from the Tories within the Coalition. Mr Clegg told a business audience at the Mansion House that he was kick-starting a drive in government to get employee share ownership into the bloodstream of the UK economy.

He said that what Britain needed was: "more of a John Lewis economy, if you like, because what many people don't realise about employee ownership is that it is a hugely underused tool in unlocking growth."

The Prime Minister later backed Mr Clegg's pledge to encourage the further spread of employee share ownership. The PM said the Eso was part of the Tory tradition: "We need to open up markets and get more people engaged in a genuinely popular capitalism."

In addition, the Coalition will introduce a new Co-operatives Bill to simplify the legislative patchwork that currently deals with mutual companies.

However worries persist that ministers are overdosing on the John Lewis Partnership model, which, as the Centre never tires of repeating, involves annual employee cash bonuses, rather than regular share awards.

More needs to be heard from ministers about the proven benefits of broad-based employee share ownership in both large and small companies, said Centre chairman Malcolm Hurlston, as the Centre works on written projects to redress the balance.

Despite most of the provisions of the Postal Services Act coming into force last Autumn, postal workers are still waiting to learn when they will receive the offer to subscribe for at least ten percent of the equity of the new-look Royal Mail organisation.

Furthermore, the Coalition's mutualisation drive in the public services has not been plain sailing. The proposed inauguration of My Civil Service Pension Ltd has slipped behind schedule. The Cabinet Office tasked with appointing a private sector partner for this government mutual joint venture, which will run the administration for 1.5m public sector pensions, was not helped when one of the four private sector final bidders pulled out.

What Mr Clegg failed to point out was that there are few large employee-owned businesses in the UK, the Co-op and John Lewis aside in their special categories. Think vehicle components supplier Unipart, (a buy-out from British Leyland) which is 70 percent employee owned and Scott Bader Commonwealth, a Nottingham based chemical company which employs around 550 people. Almost all the rest are either small, or very small.

Mr Clegg said: "I don't value employee ownership because I believe it is somehow 'nicer' - a more pleasant alternative to the rest of the corporate world. Those are lazy stereotypes. Firms that have engaged employees, who own a chunk of their company, are just as dynamic, just as savvy, as their competitors. In fact, they often perform better: lower absenteeism, less staff turnover, lower production costs. In general, Eso leads to higher productivity and higher wages. They weathered the economic downturn better than other companies.

"Is employee ownership a panacea? No. Does it guarantee a company will thrive? Of course not. But the evidence and success stories cannot be ignored, and we have to tap this well if we are serious about growth.

"The 80s was the decade of share ownership. I want this to be the decade of employee share ownership. Now that's a big ambition, I know. And it won't happen overnight. But it won't happen at all without Government taking a lead, so I am kick-starting a drive in Government to get employee ownership into the bloodstream of the British economy."

From the Chairman

Let Sir Stelios say it for all shareholders: "These guys are welcome to resign anytime. I know as share-holders we could easily replace them with talented executives and experienced non-executive directors who will cost half as much in bonuses." The directors have put forward a pay deal that could award 10 senior executives £8m worth of shares over the next three years. "We must take a stand against directors who seem to regard our company as their personal piggy bank. Simply put, if shareholders can vote down bonuses at Easyjet then bonuses will come down in all listed companies. And that is good for shareholders and pensioners whose pensions are in-vested in these companies."

Malcolm Hurlston

The ESOP Centre Ltd, 65 Kings Cross Road, London WC1X 9LW
tel: 020 7239 4971 fax: 080 8280 1938 e-mail: esop@hurlstons.com
www.hurlstons.com/esop

Mr Clegg added; "We're already doing this in the public sector, though the work of the Mutuals Taskforce, under Julian le Grand, and work being led by Francis Maude and, of course, the radical reform of the Royal Mail - on that, I'd like to pay special tribute to Ed Davey. Governments have been grappling with the future of the Royal Mail for decades. Under Ed's stewardship it will finally be transformed into an organisation in which staff have a meaningful stake. Now I've asked Ed to turn his hand to employee ownership in the private sector too. Working with professional bodies and businesses, the Coalition is going to find out where the barriers are, so that we can knock them down. Do staff and business owners know enough about employee ownership? Are the accountants and lawyers who advise them taught enough about it? Is there red tape we can cut? Does the tax system treat these firms fairly? Do we need an off-the-peg model so that more ordinary people take this up?

"We'll appoint an independent adviser - an expert in the field – to help us find the answers and solutions to these kinds of questions, which will be brought together at a Summit I will chair in the summer.

"Crucial to all of this, of course, will be encouraging take up. One option, to give you an idea, could be giving employees a new, universal '*Right to Request'* shares.

"Imagine: an automatic opportunity for every employee to seek to enter into a share scheme, enjoying the tax benefits that come with it, taking what for many people might seem out of their reach, and turning it into a routine decision. Clearly the details of that kind of policy need to be properly thought through. We need to establish which companies would and wouldn't benefit - it might not be feasible for micro-business, for example.

"But we need to start by thinking big: not asking 'why?', but asking 'why not?' Looking across the board – tax, regulation, simplicity, awareness - to help more of these companies flourish, in order to put more employees at the helm."

Mr Hurlston, welcomed Nick Clegg's support for the employee share ownership industry. The Centre had called for more sustained and high-level support in its submission to the Liberal Democrats' call for evidence on employee ownership earlier this month.

"Nick Clegg's support is welcome, but political support is only half the battle. There must be board level support within companies as well to make employee ownership truly successful," said Mr Hurlston. "John Lewis enjoys board level support for its employee ownership initiative and because of this its marketing is built around communicating these ideas. However, where employee share schemes already exist in many FTSE100 companies they have become a business function rather than promoted by ceos in the way Charlie Mayfield bangs the drum for the John Lewis model. We hope that more companies will seize the moment to celebrate their share schemes."

He defended Mr Clegg's proposals, despite criticisms that many workers could ill afford the risks associated with share ownership when markets are so volatile: "We are lucky in the UK that successive governments have recognised the advantages of share schemes," said Mr Hurlston. "This means that workers can enjoy tax-efficient pay through HMRC-approved share schemes. There are strict limits to how much an employee can invest in these schemes so that they do not invest a disproportionate amount of their wages in the company they work for. Of the three HMRC approved share schemes, only the Share Incentive Plan exposes the employee to real risk, because for the SAYE and the Company Share Option Plan (CSOP), if the share price falls below the option price, the employee can choose not to exercise the option and, in the case of SAYE, will have all savings returned. The CSOP - which is the best way of helping the low-paid and part-timers to access capital - is tragically underused," he added. "I have written to the Office of Tax Simplification this work pointing out the unique value of the CSOP in bringing social equity."

Employee share ownership works

Recent research *does* show that employee share ownership works, according to analysis from Centre member **Postlethwaite**. "Taken together, these results do in fact show very clearly that employee owned companies have attributes that any ambitious company would value highly, and which translate into benefits both for the companies themselves and their employees, " said Robert Postlethwaite. He analysed the most recent research focused on UK companies:

Matrix Evidence (UK) – 2010. This research into UK companies with significant employee ownership found:

- *Stronger employee commitment and job satisfaction*
- *Improved financial and other rewards for employees*
- *Employee owned businesses perform at least as well as those that are not employee owned and in some cases provide productivity gains*
- *Employee owned businesses may be better placed to survive difficult economic conditions*
- *Employee owned businesses may be better innovators as a result of having more committed employees.*

Cass Business School – 2010. This research found that (amongst other things):

- *Employee ownership offers particular advantages to SMEs. Employee owned companies with fewer than 75 employees have significantly better profitability compared with non-employee owned companies of the same size.*
- *Employee owned companies create jobs more quickly*
- *Employee owned companies are more resilient – between 2008 and 2009 enjoying sales growth of 11 percent compared with less than one percent for non-employee owned companies*

There is evidence too from outside the UK, carried out by academics at, amongst other institutions, Harvard, Rutgers University and the University of Massachusetts, he added.

Muted reaction to Cable's proposed crackdown on executive reward

Business Secretary Vince Cable announced in Parliament high-profile plans to curb executive pay through boosting shareholder power and by requiring firms to justify high salaries.

He told MPs that shareholder votes against remuneration reports at AGMs should force remuneration committees to revise their proposals and that future executive reward plans should be submitted in advance for shareholder approval, and not as *fait accompli* awards, as is the case at present.

But City reaction to his proposals was muted, partly because the minister's plans seemed watered down compared to the draconian agenda which was once being talked about in some ministerial circles.

Cable's menu of ways in which 'excessive' executive reward could be curtailed left out the highly controversial idea that all corporate remunerations committees should contain at least one employee or trade union representative. Instead, Cable said he wanted to see a wider range of people sitting on company boards, such as academics, lawyers, public servants and others who do not have board experience.

In addition, he shelved his original plan to require companies to publish pay ratios showing the gulf between the earnings of the highest and lowest paid members of staff.

If this was a game of 'pass the parcel,' some critics thought that Mr Cable had been astute in suggesting instead new powers which would enable shareholders themselves to assume more responsibility for vetting executive reward packages.

The Secretary of State called for:

- Company pay reports to be made clearer and more detailed, with information outlining how pay decisions have been reached and how future pay policy has been set out.
- Shareholders would be given a binding vote on executive pay, notice periods and exit packages, rather than the advisory role they have currently.
- The plans would require firms to bring in clawback policies, which would mean bonuses could be recouped where later performance shows they were not merited.
- Businesses would be required to explain how they had consulted with employees when making pay decisions and would be expected to provide evidence of how executive pay was related to business performance.
- In addition, there would be a review of what level of shareholder support was required in order for pay proposals to be accepted. Cable suggested that there might be a threshold of 75 percent agreement required for a vote to be considered successful.
- More diverse remuneration committees, which in turn would help to achieve greater boardroom diversity as a whole. He said that the Government would be looking further at the fact that a number of remuneration committee members are executives of other FTSE companies, which results in a situation where individuals have an interest in 'maintaining the status quo in pay-setting culture and pay levels.'

The Government will now consult businesses and investor groups to agree on the best way to implement the proposals.

There were two questions, left for the moment unanswered, about whether and to what extent the government would force companies to link executive rewards with long-term corporate performance and require an even higher percentage of executive bonuses to be paid in shares.

Cable said: "No proposal on its own is a magic bullet. But together the measures can enable the necessary transformation to get under way."

Centre member **PricewaterhouseCoopers** reward partner Tom Gosling told the FT that the plans "represent the most significant re-casting of executive pay rules for a decade".

Centre member **Pinsent Masons** corporate governance head Martin Webster added: "The devil is going to be in the detail. The principles the government has announced may enjoy a large measure of support but their implementation needs to be thought through and handled with care. If it is rushed, the outcomes could be severe."

Fidelity Worldwide Investment backed the Government's plans and called for directors' pay to be approved by a 75 per cent shareholder vote. Global chief equities investment officer Dominic Rossi said: "We believe that this threshold is warranted to ensure that companies consult widely with shareholders prior to a vote. An approval level of 75 percent gives companies a clear mandate and the need for a clear majority also encourages all shareholders to express their views. We urge the Government to take this into account during the consultation process."

Shadow business secretary Chuka Umunna said the proposals did not go far enough, and called for lower level employees to be put on remuneration boards and for firms to publish the ratios between the highest paid executives and the company average.

As ever higher proportions of executive bonuses are to be awarded in shares – often deferred for several years – rather than in cash, so the issue climbs higher in the **Esop Centre's** sights.

Mr Cable told MPs it was not ministers' role to micro-manage companies' pay, but said steps should be taken when there was "clear market failure".

"We cannot continue to see chief executives' pay rising at 13 percent per year while the performance of companies on the stock exchange languishes well behind," he told MPs.

Under the proposals, what people were paid would be clear and easily understood by shareholders and workers, while voting rules would be changed so investors could challenge their boards more vociferously and hold them to account. Companies would have to explain how they had taken employees' views into account, while Mr Cable urged employees to maker greater use of a right to request that larger firms consult them on pay.

John Cridland, director general of the CBI, said the proposals were 'practical' and would take the heat out of the issue: "We have been clear that executive pay must always be fair and transparent, and that high pay must be for outstanding, not mediocre, performance. Millions for mediocrity does a disservice to the reputations of hard-working businesses. The CBI strongly supports measures to reduce, withhold, or in exceptional circumstances claw back executive pay as it sends a powerful message to future executives. And it is right that remuneration committees should take into account the organisation's broader pay strategy when setting executive pay. Not including employees on boards makes sense. Every good company involves its staff in how the business is doing, but boards must be the representatives of business owners."

Terry Scuoler, chief executive of EEF, the manufacturers' organisation, said: "Employers understand the drive towards greater transparency in executive pay, stronger links to performance and ensuring remuneration committees are independent and strong. However, Cable's proposals risk aiming a large sledgehammer against the wrong nut. Giving shareholders a retrospective binding vote at annual general meetings will prove intrusive but is unlikely to be effective. Rather than focusing on the pay of top managers, which are set by global markets, the Government should maintain on its focus on helping employers create well-paid opportunities for the rest of the workforce and ensuring it has skills to fill them."

TUC general secretary Brendan Barber said: "Through its many consultations and speeches, the Government has made a compelling case for radical reform of executive pay. It's very disappointing then to see that ministers have spectacularly failed to make any significant changes to the status quo. Whilst the Business Secretary has announced a few welcome tinkers to the current boardroom pay regime, he has shied away from the big decisions on all of the major proposed reforms, from worker representation to company pay ratios and open advertising for posts on remuneration committees. Over-paid and under-performing directors concerned about greater public scrutiny of their pay and bonus arrangements can rest easy tonight. Any hopes of reversing the damaging and growing pay divide between top executives and the rest of their workforce have faded after today's announcement."

Earlier, David Cameron insisted that salaries and bonuses must be linked to company performance. The PM said rewards at the top of British firms had become 'completely out of whack' and signalled Government moves to break up the 'old boys' club' in British boardrooms. Mr Cameron said it could not be right that FTSE 100 company bosses enjoyed a 49 percent rise in salaries in the last financial year, while their companies only saw a three percent rise in value.

The PM said he was determined to end the "merry go round" of super-rich bosses rubber stamping each others' inflated deals and being rewarded for failure. "The market for top people isn't working, it needs to be sorted out," he told *The Sunday Telegraph*. "Let's empower the shareholders by having a straight, shareholder vote on top paid packages. We've seen a level of reward at the top that just hasn't been commensurate with success," Mr Cameron said. "I'm all for people being well-paid if they're succeeding, growing business. But the whole bonus culture has got completely out of whack, not just in banks, but in all sorts of businesses and organisations." While he acknowledged: "Government can't tell people what they should be paid," Cameron said it should act "where you've got a market failure." Some top executives were "taking money from the owners of the companies and from pension-holders and the employees," he said. Future pay rewards would be linked to success, not failure. A Government source added: 'Actually addressing what remuneration committees do on pay is quite a narrow bit of corporate behaviour, so this can be done without great new pieces of legislation." This suggests that the Coalition may be able to enact this wish list by regulation, rather than by legislation.

Robert Talbut, chairman of the **Association of British Insurers** (ABI) investment committee, said shareholders should be handed the right to vote on future executive pay, rather than simply approving packages already decided by the company. But the fund manager, who is chief investment officer at **Royal London Asset Management**, dismissed suggestions from the PM that investor votes should be made mandatory to curb excessive executive pay. "Remuneration is an increasingly complicated issue that has several potential remedies," Mr Talbut said. "However, I don't currently think that we need binding votes to effect change. In terms of remuneration, it would be better if shareholders could vote on the pay executives are going to receive over the next two to three years, meaning we influence things that have not yet happened, rather than things that have already been agreed." Mr Talbut said the number of votes companies need for their pay plans to be approved at annual general meetings should be increased. He said the current 50 percent simple majority vote guideline was too low as the modern investor base is more dispersed than before, when half a dozen investors used to control most companies. He challenged remuneration committees to become "more challenging and robust" and to resist a continual *arms race* for higher pay: "Standard three-year LTIP awards have been referred to as a long-term incentive but I think five-year packages would be more suitable," he added. "In addition, once those have vested, executives should have restrictions on the amount they can sell so they retain skin in the game." His comments are likely to ignite the debate on executive pay. **Hermes Fund Managers**, which is owned by the BT pension scheme – the largest UK private pension scheme – told the Department for Business, Innovation and Skills last year that additional shareholder votes on pay would be counter- productive. The ABI has backed the current use of an advisory vote on pay, arguing that shareholders had enough power already to hold directors to account.

Royal Bank of Scotland ceo Stephen Hester decided not to accept a £963,000 deferred shares bonus after a huge political and public row over the award threatened to destabilise the Coalition government. RBS is 82 percent owned by UK taxpayers and UK Financial Investments, which runs RBS for the government, said the original bonus award reflected Mr Hester's work towards rebuilding the bank: "As the largest shareholder in RBS, we have worked closely with the board to ensure that pay is aligned with the interests of shareholders and properly rewards long-term performance," said UKFI. Hester' s bonus award had been scaled back from almost £2m. RBS board members wanted Mr Hester to accept the bonus, but this proved impossible when Labour threatened to call a parliamentary debate in order to condemn the bonus award. Shadow business secretary, Chuka Umunna, told the BBC that he would not have paid Mr Hester any bonus: "Ministers have said that shareholders should play a more active role in reining in excess where they see it. This is in the main a publicly owned institution, and the PM has failed to do so. People will be flabbergasted that nothing has been done about this."

Earlier, Lib Dem minister Jeremy Browne said Mr Hester was a public servant and should turn down the bonus while the Unite union claimed that the bonus award was "disgusting".

Pressure mounted on Mr Hester after it emerged that RBS chairman Sir Philip Hampton had turned down a shares bonus worth £1.4m at the current RBS share price. Sir Philip was entitled to receive 5.17m shares in the bank later this year, but he decided - before the great furore over ceo Stephen Hester's bonus - that it would not be appropriate to receive these shares, and told the bank's remuneration committee so. It agreed.

Pay packages given to executives have increased by up to 5,000 per cent over the past 30 years. The average employee's salary has been left far behind, rising by only around 300 per cent to £25,900 a year. Research by **Incomes Data Services** found that a FTSE 100 executive received an average of £2.7m in 2010. Other research showed that ceos in 87 of the FTSE 100 companies took home on average £5.1m in basic pay, bonuses, share incentives and pension contributions in 2010-11. But there was no corresponding rise in the value of their companies, according to the **Institute for Public Policy Research** (IPPR), which carried out the analysis. A study by the **High Pay Commission**, a left-wing pressure group that pushes for curbs on top earners, found UK directors' salaries increased by 64 percent over the past decade, while the average year-end share price of FTSE 100 companies fell 71 percent. In other words, the pain was not being shared.

The **CentreForum** thinktank called for immediate legislation to ensure employees are represented on remuneration committees of company boards that employ more than 250 people. "Efforts to change behaviour without legislation have proved ineffective to date, and hence firmer action may be required," the report said.

Mr Cameron did not rule out the idea but said he was more interested in ensuring greater participation by shareholders. "The key thing is reforming remuneration committees to make them work better, I think making sure there's shareholder representation. But let's look at what will work. I'm not interested in gimmicks. I'm not interested in tokenism. I'm interested in what will actually work to correct this market failure." In welcoming the report, Deputy PM Nick Clegg said: "Increased employee participation in how companies are run has been a longstanding Liberal Dem principle, and CentreForum offers some radical proposals for how this can be promoted. Their paper deserves serious consideration." Ed Davey, the Lib Dem business minister, said: "There is strong evidence that the combination of employee empowerment and employee share ownership can help boost company performance. The CentreForum paper makes a powerful case for why this should be embraced as part of the coalition government's growth strategy of long-term suppy-side reforms."

Esop Centre staff are meeting CentreForum this week; ABI chief executive Otto Thoresen dines with the Centre on February 15.

Baxi Partnership acquires RM2

Share scheme practitioner and Centre member **The RM2 Partnership** has been acquired by **Baxi Partnership**, a firm which supports employee ownership and which is building an employee ownership model of its own through the acquisition of professional practices in a number of fields.

"At a time when the Coalition Government is looking at ways to increase levels of employee ownership in the wider economy, Baxi Partnership and RM2 Partnership have come together to offer business owners, entrepreneurs and senior management teams a single source of expertise, advice and capital to explore the benefits available through offering employees a stake in their own organisations," said a Baxi media release. "Any business interested in sharing ownership with staff will find a range of options available to them - from transferring full ownership to all the employees (similar to the John Lewis Partnership model) to creating the employee share ownership schemes used by many companies (typically where either a smaller number of staff own most of the company, or else a smaller portion of the company is made available to most employees)."

Previously Baxi Partnership had focused on providing advice and capital to support transitions to *full* employee ownership, whilst RM2 Partnership has specialised in the design, implementation and administration of employee share ownership and share options plans. In acquiring RM2, Baxi Partnership has created a single provider of expert support for businesses of all sizes who want to seize the gains in productivity, innovation, entrepreneurialism and staff satisfaction that employee ownership is shown to deliver time and again. RM2 Partnership will be an operating division running under Baxi Partnership Advisory, which provides advice on how to embrace sustainable mutual and employee ownership. Baxi Partnership is an employee-owned company itself, and welcomes RM2's 12 staff as new Partners into its business." During the last 14 years RM2 have implemented more than 600 employee share option and share ownership schemes, of every size in every business sector. It offers full-service share scheme administration too.

Peter Matthews, MD of Baxi Partnership Advisory, said: "Bringing these two organisations together creates a unique and powerful offer that we hope can help drive up levels of employee ownership right across the UK economy. With a combined 26 year track record, Baxi Partnership with RM2 now offers a comprehensive end-to-end specialist service to anyone interested in sharing ownership with their employees."

Working as a part of Baxi Partnership Advisory, RM2 Partnership will be led by Peter Turner, previously a non-exec director at RM2. It will continue to operate under its current name and to offer employee share scheme services, supported by Baxi Partnership's additional resources. Former RM2 owners Colin Paterson and Geoff Bond will remain with the business in senior advisory roles. Mr Turner said: "We are delighted to be joining Baxi Partnership as employee owners. We will continue to drive our core business of providing specialist advice on employee share schemes and look forward to capitalising on the opportunity to offer a seamless journey for customers interested in pursuing employee ownership at any level." The first-hand experience of Baxi Partnership in supporting public and private sector organisations has show repeatedly that giving employees a significant stake in the enterprise they work for and real participation in how that enterprise is run, produces a significant lift in employee motivation from which follow a series of benefits that drive superior performance." To find out more, visit its website at www.baxipartnership.co.uk Although Baxi Partnership originates from the same family owned boiler manufacturing business, it is a separate entity from Baxi Group which continues to operate in the heating industry are a part of the BDR Thermea Group.

On the move

Centre member **Norse Solutions** announced the addition of a new executive director, strengthening its experienced team. Former Morgan Stanley Smith Barney (MSSB) executive director Christopher J. Dohrmann has joined Norse to focus on business development, mainly in the US market. Chris has spent 16 years in the share-plan administration industry in various positions and is a seasoned professional expert in equity compensation administration. He will be based in New York and will focus on business development in the US and UK as well as managing large accounts worldwide, contributing to Norse Solutions' high growth.

Share sale queried

The Financial Services Authority is expected to write to **Tesco** after the supermarket's UK coo sold more than £200,000 worth of shares just days before a profit warning which sent the retailer's stock tumbling. Noel 'Bob' Robbins sold 50,000 shares at 404.51p each on January 4, netting him around £202,000. That was just eight days before Tesco reported its biggest drop in underlying British sales for decades owing to poor Christmas trading. This sent the shares of the country's largest retailer plunging, wiping nearly £5bn off its market value. City watchdog the FSA usually prefers directors' dealings to be made between 30 and 60 days before trading statements are released. But it does allow a number of exceptions in cases such as rights issues, takeovers, employee share schemes and family hardship.

Tax code change

Bill Cohen, Partner, Global Employer Services **Deloitte LLP** warned of possible changes that may be introduced to the tax code to be applied to share based payments made to employees post termination of their employment. "Currently, for share based payments made to an employee following the cessation of their employment, a Basic Rate (BR) tax code must be used. This is in contrast to cash based payments which require an 0T code to be applied. The Chartered Institute of Payroll Professionals claimed that HMRC plans to change the rules in this area such that, from April 6 2012, a single 0T code will apply to *all* payments to employees post termination of employment, regardless of the nature of the payment. As yet, no formal announcement has been made by HMRC, but you need to be aware of a change, which may be introduced from April 2012." The Centre is able to feed into the consultation on this change through its position on HMRC's employment-related securities forum. Email esop@hurlstons.com if you have any comment you wish us to pass on.

Fleet leasing company **Zenith** launched an employee share scheme to incentivise its staff. The growth share plan is designed to reward loyalty, motivate and continue to attract employees. It allows employees to buy shares in Zenith, paying market price and holding the shares permanently in their own name. Employee eligibility in an unapproved employee scheme like this is dependent on bands, length of service and performance, but is open to all staff. They can earn the right to buy additional shares by getting promoted through the grades. Qualifying employees can buy company shares annually. Mark Phillips, cfo at Zenith, said: "The scheme retains and enhances our core principal of company-wide equity ownership among all of our employees, those who have worked in creating value in the business are set to make significant, well-deserved gains.

CONFERENCES

Financial education and Eso: March 29

How do you ensure employees fully understand the benefits being offered to them through share schemes? How will share schemes hold up when auto-enrolment begins this year? What is best practice to ensure employees feel in control of their money at a share scheme offering and maturity? These are some of the questions to be addressed at a half-day Centre event on financial education and share schemes at **Computershare**'s offices in Vintners' Place, London on **Thursday March 29**. Centre chairman Malcolm Hurlston, former chairman of the charities **Consumer Credit Counselling Service** and **Credit Action** will give an introduction. A case study will be given by **Ann Govier** of **Marks & Spencer**, who this year had one Sharesave scheme under the option price and another which had grown. Ann will outline how communications and education strategies were developed and discuss her approach to executive reward as well as all-employee schemes. Delegates will learn of the support offered in this area by **Stuart Bailey** of the **Money Advice Service**. **Iain Wilson** of hosts **Computershare** will discuss how share plan administrators could help. Delegates will have a chance to quiz the experts during a panel debate. Tickets are on sale at £190 + VAT for plan issuers (£140 +VAT for members) and £250 +VAT for practitioners (£200 +VAT for members). Email esop@hurlstons.com to reserve your seat.

Jersey: April 27

This year's Centre event for Jersey trustees, in collaboration with Centre partners **The Society of Trust & Estate Practitioners (Jersey branch),** will take place on the island on Friday April 27. The Centre is accepting speaker proposals of interest to an audience of trustees. Reserve your place now - £295 for members and £425 for non-members.

Centre-IoD: May 15

The Centre will hold a joint conference with the **Institute of Directors** on **Tuesday May 15** about employee share schemes for small and medium businesses. This full-day conference will take place at the Institute's premises at 116 Pall Mall in London. Tickets are on sale now for £360 + VAT for members or £460+VAT for non-members - email dpoole@hurlstons.com to reserve a place. A packed agenda will take directors of smaller companies through a step- by-step guide to what employee share incentives could do for their business and how to implement such a scheme. Introductory speeches will be given by **Malcolm Hurlston** and **Roger Barker**, Head of Corporate Governance at the **IoD**.

Ian Murphie of **MM&K** will give an overview of the pros and cons of share schemes, **Guy Abbiss** of **Abbiss Cadres** will present on how to design the right plan for your business. **David Pett** of **Pett, Franklin and Co. LLP** will kick off the session on EMI with an overview of the scheme and its rules. **David Craddock** will present Enterprise Management Incentive case studies and then **Amanda Flint** of **BDO** will ask what the options are if a company does not qualify for an EMI plan. **Matthew Findley** of **Aon Hewitt** will cover plan implementation nuts and bolts in his presentation, followed by **Catherine Gannon** of **Gannons Solicitors,** speaking on how to implement a share scheme without racking up legal costs. **Colin Paterson** of **RM2 Partnership** will explain accounting for share schemes and **Colin Kendon** of **Bird & Bird** will discuss how to make an internal share market work for an unquoted company. **Robert Postlethwaite,** of his eponymous share schemes advisory & legal practice, will run through the options for using a share scheme in succession planning and finally **Ron Forrest** will give a case study of **Perkins Slade Ltd** where there is an EMI scheme, a SIP and an element of succession planning to bring the theory to life.

PARIS: June 21 & 22

The Centre's 24th annual conference will take place at the four-star Millennium Paris Opera Hotel on **Thursday June 21 and Friday June 22** (2012). The decision to leave Cannes, after a decade of summer conferences there, was in accord with members' wishes, as expressed in a vox pop last year. Paris nosed ahead of Madrid in the venue beauty stakes. To allow members freedom to make their own hotel arrangements, this year there will be a limited offer of rooms at the conference hotel. The hotel is in Boulevard Haussmann, a stone's throw from the Place de L'Opera (see hotel website at**:** http://tinyurl.com/7gsysk8)

One of the first Paris speakers to register was **Joe Saburn** of New York law firm **Norris McLaughlin & Marcus.** Joe's slot title is '*Shareholders finally get to speak - the practical impact of 'Say On Pay' in the US'*. **Prof. Jens Lowitzsch** of the **University of Frankfurt**, who will deliver a progress report on the findings of the Pro-employee share ownership project, in which the Esop Centre has played a major role. Jens will focus on the need for the EU institutions to play a major role in helping SMEs save thousands of jobs by using Eso as a business succession tool. **Henri Malosse, International Director** of the **French Chambers of Commerce,** will discuss recent progress of employee financial participation (Eso) in France.

The attendance prices for this conference (no VAT is charged on fees) are as follows:

	Centre members	Non-members
Practitioners	**£525**	**£615**
Plan issuers	**£425**	**£520**

Speaking oportunities are still available. Please contact Fred Hackworth with your proposed topic if you would like to be considered.

Whether you plan to attend as a speaker or as a delegate, please contact international director Fred Hackworth at: fhackworth@hurlstons.com asap. If you would like to stay at the conference hotel, contact jwigzell@hurlstons.com for details.

Pett Franklin & Co. LLP is hosting a free evening seminar on **Wednesday February 29** from 6 pm, at The Institute of Chartered Accountants in England and Wales,One Moorgate Place London EC2R 6EA. The programme will cover: *Uses and abuses of *employee trusts* for "tax planning" purposes: an update and review of HMRC's progress in the courts *Simplification of the current regime for the taxation of employee shares *Operating employee share plans in the light of the "*disguised remuneration*" rules, with examples of practical concerns **JSOPs/JOEs*: their role and experiences to date (including valuation of employees' interests) *Update on issues relating to the *accounting treatment* of share plans, *other developments* in the past year and *An opportunity to ask *questions* of the panel of speakers, who will include ***John Whiting*** of the Office of Tax Simplification and **Alun James** of Temple Tax Chambers. The hosts invite guests to stay for drinks and canapés after the event. Please let Pett Franklin & Co LLP know if you would like to attend (for catering and name badge purposes) by emailing sophie.andrews@pettfranklin.com

Eircom ESOT under threat

Eircom employees may lose their shareholding in the company as part of the ongoing deal to restructure the firm's €3.75bn debt. The head of Eircom's ESOT — which owns a 35 percent stake in the company, has raised the issue via a note on the members' website. According to trust chairman Jerome Barrett: "As it stands, the ESOT is not a party to the senior lenders' proposal. What can be expected is that some form of merger and acquisition process may be undertaken; and what role — if any — the ESOT may have in a future ownership structure will only be determined as the process evolves." The company, which had already breached debt arrangements with its lenders, receiving a further extension, until the end of January, of its covenant waiver by it senior lenders. Eircom's independent directors had, from early December, three debt restructuring proposals before them: two from various lenders and one from the company's majority shareholder, the Singapore-based ST Telemedia. However, just before Christmas, ST Telemedia's representatives resigned from the Eircom board after its proposal was rejected by lenders, leaving the company in the position of having to proceed with talks with representatives of its lenders. ST Telemedia, which owns 65 percent of Eircom, had lodged its December debt restructuring proposal after initially withdrawing a plan, due to Eurozone uncertainty.

Occupational and private pensions debacle

Employees at consumer goods giant **Unilever** launched 11 days of strike action over impending changes to their pensions. Staff affiliated to the GMB, Unite and Usdaw trade unions were striking at 12 different sites on successive days. The dispute at Unilever, which makes Marmite, PG Tips, Hellman's Mayonnaise etc, centres on its plan to close its final salary pension scheme for accruals from July, thus affecting 5,000 employees. The company is replacing it with a defined benefit pension based on career average salary. The proposals first announced in April last year, provoked a 24-hour strike last December. Union officials said that the pension changes would cost employees between 20 and 40 per cent of the value of their pensions and argued that the changes were unnecessary because the company was performing well. However, Unilever said that the reformed pension scheme was "exceptionally competitive" and had been improved in 13 different ways during the consultation process: "The reality is that the union representatives had multiple opportunities to help shape the greatly improved final outcome of consultation we reached in October, but unfortunately they decided to walk away from talks. Making these changes was a tough but necessary choice, which reflects the realities of rising life expectancy and increased market volatility. We believe the provision of final salary pensions is a broken model which is no longer appropriate for Unilever."

Royal Dutch Shell signalled the end of an era for the UK pensions industry by announcing plans to close its final-salary scheme to new members, making it the last FTSE 100 company to do so. The Anglo-Dutch oil group said it planned to close the scheme next year in order to "reflect market trends in the UK". Existing members of the fund will be unaffected - as will all new employees at the group who join before the scheme is closed. The Shell fund makes pension payments to 30,000 pensioners and has 6,500 active employees as members. At its last official valuation in December 2010, the scheme had a surplus of £1.1bn. Experts say it continues to be one of the best funded schemes in the UK. In a statement, Shell said: "We are proposing to develop a UK defined contribution pension plan for new hires to Shell to reflect market trends in the UK. The plan will be designed to ensure that the reward package in the UK for new employees remains strongly competitive."

The gulf between UK private and public sector pensions is growing following a "seismic collapse" of company schemes and fresh incentives are needed to boost retirement savings as auto-enrolment nears, an expert report warned. Nine out of ten private sector defined benefit schemes have been shut to new entrants, and four out of ten are closed to future accrual, according to a study by the **Association of Consulting Actuaries (ACA).** Its report, '*Workplace Pensions: Challenging Times'*, found a growing trend among private sector employers of all sizes to review existing arrangements and for many to find ways to cut pension costs. It said auto-enrolment in workplace schemes should widen private coverage, but bold government action was needed to help employers.

Barely three million people remain active members of occupational pension schemes, which both they and their employers contribute to, compared to more than eight million in the late 1960s.

Stuart Southall, chairman of the ACA, said that the picture was "alarming" and that good workplace pensions were "under threat almost everywhere we look".

Only a third of private sector workers now had any sort of occupational pension arrangement. The number of employees who opt out of workplace schemes was rising because they can no longer afford to make contributions, he said. As a result, people would be forced to work for longer. Under Government plans, the retirement age for both men and women will rise to 66 by 2020. However the ACA found that four in ten companies said that by 2020 they expect staff to work until they are 67 or older as they struggle to fund their old age. One in six companies expects the typical retirement age to be between **68 and 70** by the end of this decade, the ACA added.

A quarter of private-sector final-salary pension schemes were closed in 2011, according to the **National**

Association of Pension Funds (NAPF). In comparison, just three per cent of final-salary pension schemes closed in 2008, while the proportion increased to 17 per cent in 2010.

The closure of this type of pension, which guarantees a payout based on earnings at the end of a career, has affected 250,000 employees in the past three years. Many employers are moving staff over to defined contribution schemes, where payouts are based on contributions and returns on investment, placing the risk on employees, rather than on employers. Barely a quarter of employers have budgeted for the cost of workplace pension auto-enrolment, which is being phased in from October this year, the report found. *About three-quarters of employers said they are likely to auto-enrol all employees into their existing workplace pension scheme, but 27 percent are likely to review their existing pension benefits to offset the cost of higher scheme membership.* Overall, a fifth of employers are looking to reduce their pension spend, balanced by 14 percent aiming to increase spend. The survey took responses from 468 employers with more than 560 pension schemes with combined assets of £114bn.

Legal ruling on option grant disparities

The Court of Appeal found that a failure to allocate share options equally between comparable male and female staff is a sex discrimination issue, as opposed to a potential breach of equal pay legislation, reported lawyers Eversheds. Aside from the legal, evidential and remedies implications in terms of which legislative provisions apply (namely the Equal Pay Act 1970 or Sex Discrimination Act 1975, though now all are contained in the Equality Act 2010), the distinction proved critical for the claimant in this case owing to relevant time limits. She brought her case as an equal pay claim because she found herself time-barred from pursuing a sex discrimination claim in respect of alleged damages of £34,000.

Ms Hosso was a senior research analyst. Shortly after she joined the company, her employer introduced a share option scheme for staff. The scheme rules were: "*The Board, acting for and on behalf of [the company], may grant any eligible employee an option over such number of shares at such option price and with such conditions of exercise as they may determine*". She received share options under the scheme but later discovered that a male colleague had received a greater allocation. She launched an equal pay claim in the tribunal.

A key issue was whether the claim was correctly pleaded under the Equal Pay Act 1970 or whether it fell within the Sex Discrimination Act 1975, these Acts together providing comprehensive protection, but being mutually exclusive. This was especially relevant since she had launched proceedings more than three months after the last share allocation. As an equal pay claim, the proceedings would have been launched in time (i.e. within six months of her leaving the company) but, if she were wrong and her claim were properly one of sex discrimination, she would be out of time (limitation falling three months from the last act complained of – in this case, the last options allocation). Both the Tribunal and EAT focussed upon section 6(6) Sex Discrimination Act 1975 which made clear that it was the relevant legislation under which to bring a claim of discrimination in the context of non-contractual payments. Contractual claims were to be brought under Equal Pay Act 1970. Section 6(6)

Despite the share option scheme being discretionary in nature, relying on the case of *Hoyland v Asda Stores* [2005] IRLR 438, Ms Hosso argued her entitlement to share options arose by the mere fact of her employment and was therefore a benefit regulated by that contract for the purposes of section 6(6) in the sense that but for the existence of the contract of employment, no share options would be allocated. Comparison was drawn between share option allocation and deferred pay, such as pension entitlement, the value of which is not known at the time of receipt but only later, as in the case of matured share options when the shares are sold.

The Court of Appeal rejected the approach adopted by the ET and EAT, but nonetheless found that the latter was correct in determining that Ms Hosso's claim was properly one of sex discrimination and was accordingly launched out of time. The Court found that focussing upon section 6(6) in isolation, as the ET and EAT had done, proved a red herring since the two Acts had to be read together. Had the lower courts considered the relevant provisions of the Equal Pay Act 1970 this would have clarified that, in order to succeed in an equal pay claim, Ms Hosso had to show contravention of a term of her contract of employment that was modified or included by virtue of the equality clause (Sections 1 and 2 Equal Pay Act 1970). Similar provision is now reflected in the Equality Act 2010.

On the facts, the Court of Appeal was clear that Ms Hosso would fail. In her case there was no difference between the terms of the share option scheme applicable as between her and her colleague, hence the equality clause had no operation. Ms Hosso's grievance lay not in a difference in contract terms but a difference in the exercise of discretion conferred by a standard contract. Such a claim must be brought as a sex discrimination claim, under the Sex Discrimination Act 1975. Turning to the implications of *Hoyland*, the Court of Appeal was clear that a discretionary benefit that is conferred by the employer under a contract of employment is not regulated by the provisions of that contract in the normal, literal sense. Section 6(6) only applies to benefits actually determined by contract - if the express or implied terms of the contract govern the right to, or at least eligibility for, the benefit and its amount. *This decision serves as a reminder that distinguishing between these two important forms of statutory protection remains as significant as ever under the Equality Act.* Now that the distinction between the two claims is re-enforced, those acting for employers in respect of such claims will be clearer as to the correct basis of claim.

Executive reward in Dutch takeovers

The provisions in proposed legislation regarding executive pay in takeover situations have been amended again. The recently added provisions on freezing the value of executive shares or options during takeovers have been changed, said lawyers De Brauw Blackstone Westbroek. The new proposal is that, at the time that the public offer is announced, the company determines whether the shares, depositary receipts or options have increased in value. This determination concerns shares, depositary receipts or options granted to the director by way of remuneration.

The moments at which the value is determined are:

- four weeks before the day that the public offer is announced
- four weeks after the completion of the offer
- on the day that the director disposes of his shares, depositary receipts or options or the day that his appointment ends

If there is an increase in value, this amount will be deducted from the director's pay, but subject to a maximum. This maximum is the increase in value between the first moment – four weeks before the announcement - and the second moment – four weeks after the offer's completion. Shares which the director bought himself or inherited do not fall within the Bill's provisions.

Eso strikes gold in South Africa

The R3.7bn (GBP 296m) worth of employee wealth that two South African mining companies dished out in December to almost 16 000 rank and file employees will probably have diggers the world over eating their hearts out.

It is a formula for staff retention and it is also a private-sector response to the likes of nationalisation promoter Julius Malema – and there is still more to come.

While iron-ore miner **Kumba** turned 6209 rank and file employees into pretax half-millionaires before Christmas, black-controlled coal and mineral sands miner **Exxaro** gave 9694 employees R135000 (GBP 10,800) each in distributing R1bn. The next five years will see another payout at both companies, which form separate parts of the formerly state-owned steelmaker Iscor's mining assets.

Even in December 2005, the market capitalisations of unbundled assets had octupled to R60-bn in four years. Since then, further unbundling has spawned another value uplift.

Kumba iron-ore company was merged into Anglo American and the remaining assets of the deactivated Kumba Resources – together with Namakwa Sands and a crucial 20 percent of Kumba Iron Ore – went into Exxaro, to create a 55 percent black-held entity that is today South Africa's top coal producer, from which Kumba obtains its black economic-empowerment (BEE) credentials.

Exxaro gets dividends galore from Kumba, which has given three percent of itself to near-mine Northern Cape communities and another three percent to its employees below management level in an employee share ownership plan (Esop) that has resulted in multibillion-rand worker wealth. Labour unions see Kumba's Esop as the world's most successful employee participation scheme that will vest again in 2017, as will that of Exxaro.

Kumba's share price underwent a more than fourfold uplift in the five years, appreciating from R120 a share on listing in 2006 to R516 a share on maturity of the first five-year phase of the scheme in 2011. R290m was paid out in dividends, at an average of R55000 per employee, half of which was used to pay off the loan given to workers to buy the shares. Exxaro's share price trebled in the period from R58 a share on listing to R175 a share.

"We took a view that it is important for every single employee to participate in the growth and development of the company and the benefits that normally accrue to shareholders," Nkosi told Mining Weekly. Exxaro's Mpower worker ownership scheme chairperson, Danny Carolus, is now looking forward to the next scheme later this year.

The United Association of South Africa labour union's Franz Stehring says the scheme not only empowers people through wealth, but also helps to retain scarce skills within South Africa and even attracts skills back to South Africa. *"This shows that we don't need nationalisation to share wealth. A decent Esop scheme can share wealth without nationalisation,"* said Stehring. Solidarity union's Louis Pretorius said that the Exxaro scheme differs fundamentally from Kumba's Esop in that the three percent of the 26 percent equity that the iron-ore miner distributed to its workers forms part of its mandatory black economic-empowerment (BEE) credentials, whereas the distribution of the coal and mineral-sands miner is entirely voluntary as it is automatically more than just BEE-empowered as a result of being more than half-owned by blacks. Pretorius said that Exxaro's voluntary payout represents an even greater token of care for employees than a payout that forms part of a compulsory legal framework.

Exxaro executive Retha Piater said that the salaries of the beneficiaries range from R5000 a month to R35000 a month, with 90 percent of the recipients being previously disadvantaged South Africans. "When we developed the empowerment transaction, we made sure that employees who previously did not take part in share schemes had an opportunity to do so. We expect beneficiaries to use their Mpower payouts in a responsible and constructive manner, ultimately to improve their current and future financial security," Nkosi said.

Both companies ran extensive financial education programmes for beneficiaries. Many employees have bought, paid off or renovated their homes from the proceeds and others have gone into business.

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