EsopCentre

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it's our business

newspad of the Employee Share Ownership Centre

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WELCOME

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From the life president

What good news that pharmacists can now prescribe and make the health service more efficient. The idea has taken decades to catch on and we had to wait for a Prime Minister whose father was a pharmacist before it happened!

I was involved at the very beginning in 1990 when Superdrug had a single outlet. Only Boots had a chain of pharmacies (the Co-op was a slightly different matter) and the rest were run by individual pharmacists who relied on being able to sell on to enjoy a comfortable retirement.

Superdrug was part of the Kingfisher group masterminded by the late Nigel Whittaker. He put a skilled operator in charge, Steven Round, and placed my skills at his disposal.

Wizardry or no, commercial logic or not, results took time and every new outlet was an achievement. It took till this week to be able to declare victory - 30 years on.

The really odd thing is that pharmacists have always gone through a full medical training and the additional services they have been allowed to offer over the years have not required new learning at all. Their professional training is only now being fully used.

It will be efficient for the health service, good for patients and consumers like us and far more satisfying for pharmacists.

There are parallels to draw with the esop world. It began in profit sharing and benefit trusts, then was shoehorned into share plans. Now it needs to adapt to meet changing economic structures.

There are Roadchef lessons too. It can be a long road to final justice and it is not enough for supportive MPs to welcome progress thus far.

Malcolm Hurlston CBE

Roadchef employees upset by low compensation payout

Upset and bemused former Roadchef Esop scheme members are demanding full transparency from their Roadchef EBT trustee as to why their long overdue compensation payments are so much lower than they had expected.

Only in recent weeks did they learn from chartered accountants Menzies that their payouts, after a 40 year wait, are to vary between only £200 and a maximum £13000, when some were hoping for £50,000 or more.

Millions from the compensation paid by former Roadchef md and chairman Tim Ingram Hill have been swallowed by the fees paid to litigation funding company Harbour and to lawyers defending 500 or so Roadchef employees who discovered that their Esop shares in the motorway services group were transferred from their EBT to another 'performance' trust controlled by Mr Ingram Hill, prior to the groups sale to Japanese investors in 1998.

Litigation funding companies like Harbour charge clients substantial fees for stumping up millions of pounds to fund civil and commercial court cases because such companies face losing their money if the judge rules against their client.

Furthermore, the compensation distribution scheme finally approved by the High Court last October rubber-stamped payments to several thousand Roadchef employees who did not join the company until ***after*** the Esop scheme was terminated. Although they have received the smallest payouts, nevertheless they collectively have reduced the compensation available to the former Esop participants by 30 percent. They were only included in the compensation scheme because the original trust deed wording about who the beneficiaries were to be was imprecise.

Now angry Esop beneficiaries want full disclosure of the compensation fund accounting - they want to know how much the fund received and how much was paid out in working expenses and fees.

However they face a major obstacle in that Mr Ingram Hill only agreed to pay compensation (thought to be at least £10 million) provided the sum was kept secret.

The Roadchef EBT trustee, Mr Christopher Winston Smith, achieved a major victory when he forced HMRC to return to the employee beneficiaries a substantial 'tax payment' made by Ingram Hill on the estimated £27m he received from selling the Roadchef shares he had amassed, mostly by transferring employee Esop shares from the original EBT to his performance shares trust.

Another obstacle is that it is not known how much tax, if any, the trustee agreed to pay to HMRC on the meagre compensation payments.

To add salt in the wounds suffered by the Roadchef Esop beneficiaries over the years, several MPs who raised their case in parliament appear to think that justice has at last been done. Many former Roadchef employees beg to differ. They feel outrage that the final payments are so low.

TOP STORIES

Reasons for "BRISA"

In an influential editorial last month, Rosie Carr, the editor of the *Investors Chronicle*, puts forward three reasons for creating a new vehicle a "BRISA" - an ISA for investment in British shares: A thriving equities market is instrumental in helping firms prosper through the advantages it confers, such as giving access to cheap capital that does not need to be repaid and which can be replenished when more fuel is required; providing reassurance to customers and suppliers – through transparency around finances and high levels of scrutiny – and finally, being the means to attract and incentivise employees through share ownership.

EVENTS

Webinar: February 26

The role of direct employee share ownership in market economics

In this 45-minute webinar, David Craddock discusses the historical contribution from the USA and Europe on the development of direct employee share ownership in the context of market economics; the capacity of employee share schemes to respond to the creative instincts of human nature; the interaction between business competition and business cooperation; and the mindset of entrepreneurship through employee shares participation.

Have your questions ready for him at 15:00GMT on February 26. To take part, **register now**.

Lord Mayor's Coffee Colloquies: SDG10 - Reduced Inequality: Productivity & Employee Share Ownership—February 13

You are invited to join the Esop Centre and City of London representatives at a Coffee Colloquy on Tuesday February 13 2024, in Mansion House, Walbrook, London EC4N 8BH. This event is part of a series of workshops over the next 10 months on the UN's Sustainable Development Goals.

Timing: 08.45 to 11:15 GMT.

Organised by the Centre, the colloquy will address Goal 10: Reduced inequality within and among countries. While markets and trade liberalisation have lifted billions out of poverty in recent decades, stark differences between and within nations persist. The speakers will highlight the forces, trends and techniques that will help to reduce inequalities, in paricular employee share ownership and the financial participation of employees in enterprise.

The broad range of experts will consider how inequality might be addressed by raising productivity helped by the use of employee share ownership. Factors that contribute to this include ground-up volunteer-led initiatives, and the practical steps individuals can take to contribute to closing the gap between the 'haves' and 'have-nots.'

Agenda

08:45 – 09:15 Arrival and coffee served

09:15 – 09:20 Opening remarks by the Lord Mayor's Aldermanic Representative, Alexander Barr

09:20 – 10:00 Nine expert presentations

10:00 – 10:30 Open Q&A

10:30 – 11:15 Discussion, Networking, Coffee

11:15 – Close

Speakers

Employee Share Ownership Centre: Damian Carnell; David Craddock; and Ifty Nasir

External: James Ashton, Quoted Companies Alliance (QCA); Jansev Jamal, Pro Bono Economics; Erik Johnson, Inclusion@Lloyd's; Sasha Molodtsov, Diversity Project; Dr Andy Sloan, International Sustainability Institute; Lorraine Young, The Worshipful Company of Chartered Secretaries and Administrators.

Q&A Moderator

Robert Pay, chairman, Esop Centre

The 695th Lord Mayor of the City of London, Alderman Professor Michael Mainelli Mayoral Theme "Connect to Prosper" celebrates our multiple knowledge miles, showing that the UK is a place where problems come to be solved. The Coffee Colloquies will demonstrate this, bringing together voices from in and around the city to talk about how their work supports the achievement of one of the UN Sustainable Development Goals. Through fast-paced transfer of knowledge, and with a focus on connections and networking, the Coffee Colloquies will invigorate our knowledge miles as the World's Coffee House.

Please join us for this important conversation on how Employee Share Ownership can play a part in reducing inequality.

For more details and to register for a place (at no cost, but on a 'first come first served' basis) please go to: Lord Mayor's Coffee Colloquy-SDG10.

If you have any questions, please contact the Centre at esop@esopcentre.com

Vestd sponsors 2024 British Isles Share Plan Symposium

Vestd, the share scheme and equity management platform, has become the lead co-sponsor of our seventh British Isles share plan symposium, which will be at White & Case's London offices on **Thursday April 25**.

Under the ambitious heading: *Employee Share Plans – Beyond the 1%*, the 2024 Symposium will focus on increasing productivity through an uplift in the percentage of total equity in employee ownership. If at least 10 percent of equity were in the hands of employees, as is frequent in France, this should boost productivity and benefit all investors.

Delegates will hear from: Baker McKenzie; CMS; David Craddock Consultancy Services; Deloitte; EQ; Global Shares; Macfarlanes; MM&K; RM2; Tapestry Compliance; Wealth at Work; and host

WHITE & CASE

The programme will include interactive panel sessions based on content accessible in advance online. The in-person session will be on the afternoon of Thursday April 25, at the offices of White & Case in central London. The *newspad* awards presentation will close the symposium, followed by a drinks reception.

A preliminary programme can be viewed on the event webpage.

Admission rates:

Delegates from ***plan issuer companies*** *will be admitted* ***free*** *of charge.*

Practitioners:

Members: £450; Non-members: £800

Trustees:

Members: £400; Non-members: £650

Multi-booking discount: **50%** off cost of ticket for your **third delegate**.

**All prices are subject to UK standard rate VAT*

There will be limited opportunities to attend remotely for international members not able to travel to London.

To register a delegate email: events@esopcentre.com or phone the team on +44 (0)207 562 0586

About the event co-sponsor: *Vestd aims to make sharing ownership "a piece of cake". It helps businesses to enhance their rewards and reduce their risks. Companies that share ownership report growth of 10.2 percent compared with the UK average of 7.7 percent. Additionally, 93 percent of founders say their share scheme helps their company grow and 95 percent say shares improve employee loyalty. In addition, there are big tax efficiencies.*

Vestd wants all of this to be accessible to all, so its platform makes it easy to get going; business leaders can manage their own equity and unleash its power at the same time. The easy-to-use software helps businesses manage their shares, options and schedules and keeps an accurate live cap table.

Vestd's is the only technology of its type to be FCA regulated and is fully synced with Companies House. For further information contact the firm to arrange a call with one of Vestd's equity specialists.

vestd

BrewDog growth hits real living wage

Last month the craft beer giant BrewDog said it will no longer pay employees the Real Living Wage. The Scottish brewer said that this was necessary to help reverse the 2022 operating loss of £24million.

BrewDog ex-workers set up a "Punks With Purpose" campaign in 2021, amid allegations of BrewDog mistreatment. This group said abandoning the Real Living Wage is against BrewDog's public identity and a real terms pay cut for front line staff.

In May 2022, BrewDog co-founder, James Watt announced that he will give 20 percent of his shares in BrewDog equally to salaried staff over four years via an Employee Benefit Trust.

The company value was then some £1.8 billion, so five percent was worth £90 million. This chimes with BrewDog saying the start value of these shares is some £120,000 each for the 750 salaried staff in point. That is £30,000 a year each for four years.

Also in 2022, BrewDog introduced a pub profit sharing plan. Half of pub profits will be shared with hourly bar staff, worth some £3,000 to £5,000 each; paid in two six-month instalments. The average is 14 percent of pay for a bar person on say £28,000 base pay a year.

Abandoning the Real Living Wage during a cost of living crisis, in a reversal of the company's culture, is a stark move.

Damian Carnell, founder of Centre member **Corpgro** commented: "*Companies have a right to balance revenue and cost to deliver sustainable profit and growth. BrewDog is a massive success story. It has created a strong new brand, healthy and growing year on year sales, many jobs, and products which are world beaters.*

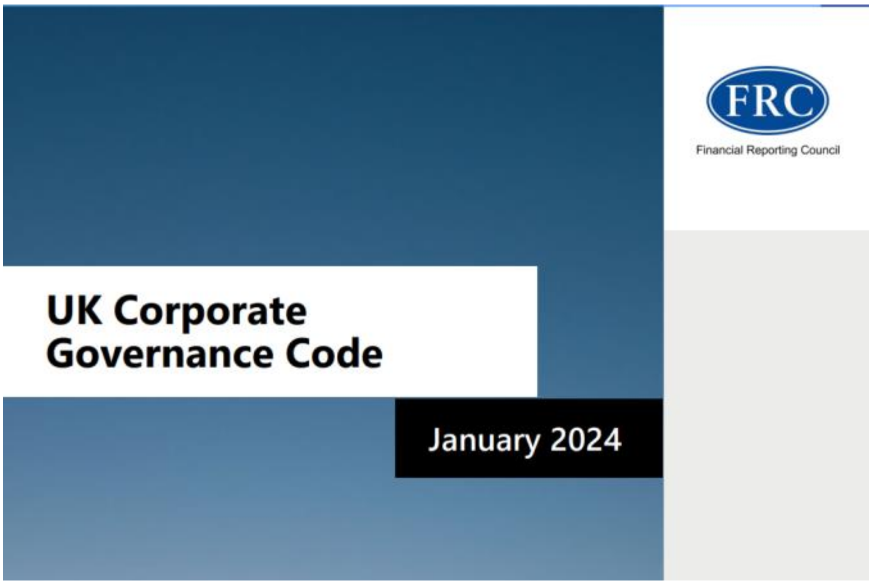
"The broad-based share plan for salaried staff is a healthy way of sharing in success and driving ongoing future results. This, combined with the pub profit share arrangement, will be valuable tools in BrewDog's aim to cement its past success, and to step forward as a major listed company in the future. At the 2022 estimated market capitalisation of £1.8 billion, each founder is worth some £450 million. At 15 percent annual growth, at the end of the four-year share plan, each participant will receive some £210,000. The founder's worth at that point would be some £780 million for one and £630 million for James Watts, post his share give away. In short, Watt's share gift will by then have cost him £150 million. But his remaining stake will have increased by some £180 million or so over the same four-year period.

"Within this success story, some things are surprising:

- ⇒ *First, the employee share plan is met fully by James Watt alone. The company benefits of the share plan will be enjoyed by all shareholders, including his co-founder. The IFRS2 charge will flow through as a cost anyway, and a sensible structure is needed to claim tax deductibility for that heavy cost.*
- ⇒ *Secondly, a highly successful fast growth company can manage operating profit in multiple ways. BrewDog is doing just that, no doubt. But abandoning the Real Living Wage is a savage blow to the company culture and its brand.*
- ⇒ *Thirdly, for a super-savvy marketing company, the BrewDog story could have been framed much better. Aside from bar staff and salaried staff, who else is left? Brewery workers on the shop floor among some others. And the wage rise for them can be managed upward at minor cost surely? That picture is much better than the headlines seem to say at present. So why has BrewDog lost the thread of this story?*

"So, best not to abandon the Real Living Wage; just disapply it to those in profit share and equity share plans. Which is loads of people. That delivers most of the cost saving, but with a much better message and it would also protect the remaining staff from a real pay cut."

New UK Corporate Governance Code: remuneration provisions



The Financial Reporting Council has published the new UK Corporate Governance Code, which includes most of the remuneration changes proposed last year.

⇒ The Code will apply to financial years starting from January 1 2025.

⇒ Most of the remuneration changes proposed in the consultation, including enhanced malus and clawback disclosure, have been implemented.

⇒ There is no five year "look back" requirement.

⇒ Directors' contracts and documents which cover director remuneration should include malus and clawback powers.

PDMR share dealing

Personal Group Holdings, a UK workforce benefits provider, disclosed director and senior manager share dealings under its Employee Share Ownership Plan. Cfo Sarah Mace and chief commercial officer Karen Thornley acquired company shares on January 2 after the latest plan allocation period ended on December 31. Mace purchased 82 shares at 185 pence per share, taking her total holding to 12,275 shares or 0.039 percent of issued capital. Thornley bought nine shares at 185 pence, increasing her stake to 2,677 shares or 0.009 percent. The share price reflects the lower of mid-market values at the start or end of the accumulation period under plan rules. The disclosure provides transparency around senior executive share transactions resulting from the employee ownership programme. As plan participants, the directors gained additional equity through the tax-advantaged scheme facilitating workforce share ownership.

UK consumer confidence hits highest level in two years

City A.M reported that UK consumer confidence rose in January and had its highest reading in over two years, as a surprise rise in inflation appeared not to unsettle people. The GfK consumer confidence index picked up to -19 in January, up from -22 the previous month and -24 in November. Joe Staton, client strategy director GfK, said: “Importantly, the view on our personal financial situation for the coming year has gained two points and now stands at zero.

“This is exciting as it ends 24 consecutive months of negative scores. This significant change is the best single indicator for how the nation’s households feel about their income and expenditure.

Tax cut promises may need to be rolled back

Promises of tax cuts during general election campaigns may have to be rolled back, as the UK economy faces some of its worst problems since the 1950s, according to the Institute for Fiscal Studies. The think tank has said that politicians need to be honest about tough economic trade-offs, while the Treasury has claimed that the economy is turning a corner, and that growth would mean more funding for public services.

Big companies at risk

Nearly a fifth of listed firms issued profit warnings in 2023. EY’s profit warnings monitor found that 77 profit warnings were issued in the final quarter of last year. A third of these warnings were from firms with annual revenue of over £1bn, around double the average rate. Firms in the consumer discretionary space accounted for 35 percent of all warnings in the final quarter while industrials made up 31 percent.

Post Office boss admits money from Horizon victims may have gone into executive pay

The ceo of the UK's Post Office admitted to MPs that money wrongfully taken from postmasters affected by the Horizon scandal may have gone towards executive pay packages. Over 700 post office branch managers were wrongly convicted of theft because of Horizon software. Many paid money to cover fabricated shortfalls, which the ceo acknowledged could have funded executive remuneration. Fujitsu apologised for its role supplying the faulty Horizon system and said it had a moral obligation to pay into the victim compensation scheme, expecting discussions with the government. The Post Office ceo *struggled to uncover where the wrongly obtained funds went*, though audits raised it as a possibility. Scotland's top prosecutor also apologised for the Horizon prosecutions that led to miscarriages of justice.

ADM postpones some executive bonuses amid accounting probe

Archer-Daniels-Midland Co will delay paying performance bonuses to some executives until its financial statements are completed and audited, according to a staff memo seen by *Reuters*.

The delay, detailed in a memo sent to staff on Thursday January 25, came days after ADM sidelined its chief financial officer and brought in outside lawyers to launch an investigation into accounting practices.

The investigation is focused on the nutrition segment, a relatively small unit of the grains trading giant's business, which played an outsized role in executive compensation.

Compensation from ADM's performance incentive plan for members of the company's executive council, including any who retired last year, would be postponed, the note said.

ADM declined to comment.

Payments to other employees would be paid in March on the company's normal schedule, according to the staff memo.

News of the investigation into accounting practices sent ADM shares tumbling 24 percent on January 22, the biggest fall since 1929, according to the Center for Research in Security Prices.

South African executive earns $3.4-million salary from Vodacom

Vodacom Group ceo Shameel Joosub received R64.34 million ($3.4 million) in compensation for the 2023 fiscal year, a 4.7 percent decrease from the prior year. Joosub has led the South African mobile communications company since 2012. His pay includes a R16.64 million ($0.88 million) base salary plus short and long-term incentives. Joosub has been with Vodacom since 1994 and holds board positions across group subsidiaries, providing over 22 years of telecom expertise. Under his leadership, Vodacom expanded to serve 32 African nations with 130+ million customers. Revenue grew 16 percent to R119.17 billion ($6.31 billion) in 2023, and assets rose 28 percent to R228.32 billion ($12.09 billion). Joosub also personally holds a 0.09 percent Vodacom stake worth R204.1 million ($10.8 million). While his compensation dipped slightly year on year, Joosub steers impressive growth.

Big bucks for California nonprofit ceo

The Orange County Register reported on high salaries for nonprofit ceos in California, with the top earner being Lloyd Dean of Dignity Health at $35.5 million. While high, this pales in comparison to for-profit executives like Sundar Pichai of Alphabet at $226 million. The IRS defines compensation as wages, bonuses, retirement contributions and other benefits. Though rules exist against "excessive" pay, reasonableness is subjective. Factors like job duties, experience, hours worked, and comparables determine reasonableness. Watchdogs caution against $1m+ nonprofit pay, but organisations argue they need high salaries to attract talent. Tax-exempt status means avoided taxes, so pay comes from public pockets and is built into insurance premiums and health costs. Though undisclosed per law, the IRS examines nonprofit pay more closely, like assessing excise taxes above $1m. Ready to earn their corn, consultants advise paying executives their worth to serve the mission.

Apple ceo earned less in 2023 than in 2022

Apple ceo Tim Cook's total compensation for 2023 was $63.2m, a significant decrease from his 2022 earnings of $99.4m, according to Apple's proxy statement. His target pay for 2023 was set lower at $49m, but he still exceeded that by 28 percent. The ratio of Cook's pay to the median Apple employee's pay was 672:1. The breakdown of Cook's 2023 compensation included a $3m salary, nearly $47m in stock awards, over $10m in incentive pay, and around $2.5m in other compensation. Apple also disclosed substantial 2023 pay for other executives. Though down from 2022, Cook's pay remains high, especially compared to median employee pay. Apple noted its policy since 2017 of providing Cook private air travel and security for business and personal reasons, costing over $2m in 2023. The filing demonstrates Apple's commitment to transparent executive compensation.

Glass Lewis and ISS announce updates for 2024 proxy season

Glass Lewis and ISS, the prominent proxy advisory firms, released 2024 updates that affect executive compensation evaluations. Glass Lewis goes beyond the US SEC clawback rules to recommend expansive policies on misconduct, failures and unearned pay. It suggests clearly disclosing ownership rules and vote abstentions by shareholders getting equity awards. ISS provided updates such as slight changes to pay-for-performance screens, typically not changing vote recommendations within five days of meetings and scrutinising non-GAAP metrics that boost incentive payouts. ISS also clarified analysing problematic change-in-control severance versus valid incentive awards. The updates impact compensation programme assessments and shareholder vote recommendations. Companies should review the changes to see if they affect current practices and disclosure and make adjustments accordingly, as the firms begin applying the new policies in early 2024.

Director's remuneration and directors' service contracts: legal requirements in Malaysia

According to *Lexology*, in Malaysian companies directors cannot pay themselves from company funds without authorisation in the constitution or approval by shareholders, as they have fiduciary duties prohibiting improper use of company property. For private companies, the board of directors can approve fees and benefits but must notify shareholders within 14 days. Members holding 10 percent of voting rights can require a resolution approving the payments. For public companies, shareholder approval at a general meeting is required. Listed companies' constitutions must mandate fixed, non-percentage fees and annual shareholder approval. If public companies or subsidiaries have directors' service contracts, copies must be available for inspection. Breaching these requirements can lead to fines. A case study showed charges against a company for non-compliance, though later compounded. Key takeaways include securing authorisation and following notification, approval, and availability requirements for director pay and contracts.

How to make green incentives pay

In a piece for the *FT's Moral Money* newsletter, Patrick Temple-West quizzed climate focused investor Tom Steyer about his efforts and a key feature of his firm's investment thesis.

Adding environmental, social or governance (ESG) provisions to executive pay has been a growing trend. Three-quarters of S&P 500 companies have disclosed that ESG metrics contributed to executives' pay in 2023, up from two-thirds of companies in 2021.

The use of environmental metrics in pay has increased significantly in North America, according to a January 24 report from Willis Towers Watson. Over the past three years, use of environmental metrics rose from 12 percent to 44 percent of constituents of the US benchmark S&P 500 index (and rose similarly among big Canadian companies too). Carbon emissions reduction was by far the most commonly used metric, the firm said.

But the use of these criteria is increasingly drawing fire from asset managers. "Oftentimes they are very subjective, fluffy and easily gamed," asset manager State Street explained.

Asia-Pacific firms integrate ESG metrics into exec incentive plans

A growing number of companies in the Asia-Pacific are integrating ESG metrics into executive pay packages amid pressure from investors and stakeholders to promote sustainable business practices, according to headhunters and professional services firms.

The increase is reflected in the Willis Towers Watson study, which was released on Wednesday, January 24.

The proportion of Asia-Pacific companies factoring ESG metrics into executive pay increased to 77 percent last year, compared with 63 percent in 2022, according to WTW's analysis of the largest 264 companies among those that make such disclosures in seven markets in the region.

Greenhushing and the path to quiet-quitting

The *Business Times* reports that there's a hidden danger to companies playing coy with their ESG initiatives - also known as "greenhushing" - while Asia-Pacific companies continue to fall behind their global counterparts in linking their executives' incentives to environmental sustainability goals.

Sustainability consultancy South Pole's latest report on "greenhushing" confirms a visible undercurrent in the way some Singapore companies deal with more contentious corporate governance disclosures, such as director remuneration: When in doubt, stay silent.

Time for a fresh look at DEI metrics in executive compensation

It is estimated that over 84 percent of companies in the S&P 1500 use some form of "social" metric when determining their executives' incentive compensation. Many of these social metrics set forth diversity, equity and inclusion ("DEI") goals—some quantitative, others qualitative—usually summarised to some degree in a company's publicly filed proxy statement. For calendar year-end companies, decisions regarding the metrics of incentive compensation programmes are typically made in the first quarter of each year.

Last summer, the US Supreme Court held in two companion cases that race-conscious admissions programmes at Harvard and the University of North Carolina violated the Equal Protection clause. These decisions focused attention on the risks of DEI programmes outside the college admissions context and emboldened critics of DEI programmes. Some companies with well-publicised DEI goals received letters from anti-DEI activists questioning the legality of their DEI initiatives. Others have been sued under civil rights or securities laws, or received threats of such litigation.

Employee ownership move for payments broker

West Yorkshire payments broker Accept Cards has transferred all its shares to an Employee Ownership Trust. Founded in 2005, Accept Cards provides payment advice and services alongside major financial brands. The transaction is understood to be the first of its kind in the UK payments sector. Through the EOT, 14 employees gain ownership with three of them becoming trustee directors. Founder and ceo Richard Bradley, who will remain in his role for at least six more years, is proud to pass stewardship to employees as a collective, knowing they embody the ethos. He expects growth to continue with six new hires projected.

Employees take ownership of £67m metals and minerals supplier

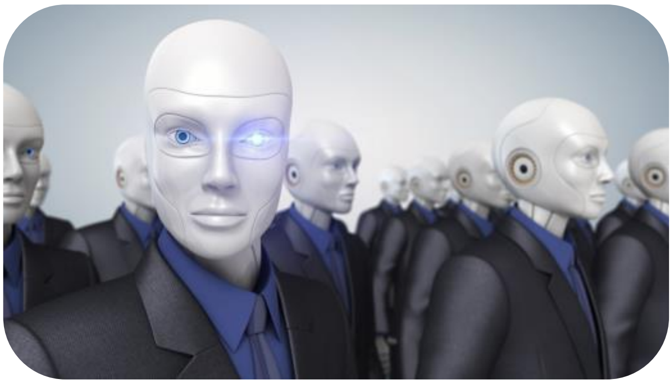
The £67 million turnover UK-based metals and minerals supplier Westbrook Holdings, trading as Westbrook Resources was sold to an EOT by shareholders. Westbrook sources and supplies 60+ metals and minerals globally. Ceo Shaun Walton and managing director Nick Jones will stay on, along with senior management, to oversee continued growth under employee ownership trust. The EOT secures an exit for shareholders while creating an employee-owned company.

Other new EOTS

- PR firm specialising in the health, fitness and lifestyle sectors Action Group
- Public relations agency Viva
- Soho-based executive secretarial and PA recruiter Bain and Gray
- Car dealer franchise Helensburgh Toyota
- Commercial property and asset managers Estama UK

Europe

HR leaders' role towards ethical AI integration



Artificial Intelligence (AI) is affecting human resources, offering opportunities for efficiency and innovation.
However, the rapid adoption of AI brings up ethical considerations, particularly in employment law and human rights protection. Several laws and regulations on AI governance are currently on the way. At EU level the AI Act is currently in the legislative process. In December 2023, the parliament and the council reached a preliminary agreement. The EU AI Act is likely to be passed this year. In preparation for upcoming regulations, the integration of AI into HR practices will be complex.

In an article for *Lexology,* Centre member Baker McKenzie outlines the key actions for HR leaders to take now to ensure that the ethical aspects are considered as much as the technical aspects.

India

Budget 2024: Will the government revise taxes on Esops?

According to *Business Today*, there are potential changes to the taxation of employee stock ownership plans in the forthcoming 2024 Indian budget. Currently, under the Income Tax Act of 1961, Esops face double taxation - first when employees exercise their stock options, and again when they sell the shares. Startups have requested switching to a single point of taxation when shares are sold to simplify compliance. Experts say the government could rationalise the mismatch in tax liability timing by deferring taxes until share sale. Esop taxation is complex, especially with multi-year vesting periods and international work locations. Shares are currently taxed as capital gains. The fair market value less exercise price is considered taxable income at allotment. There is room to simplify and clarify Esop tax regulations for individual taxpayers.

USA

PE is starting to share with workers, without taking a financial hit

In a *New York Times* think piece, US economy reporter Lydia de Pillis wrote that buyout giant and Centre member, KKR pioneered a model of granting ownership stakes to employees at its portfolio companies. Now it wants the approach to spread.

KKR executive, Pete Stavros, had developed a model to provide employees with an equity stake in companies it purchased, so the workers would reap some benefits if it was sold on for a profit. When all goes according to plan, KKR doesn't give up a penny of profit, since motivated workers benefit the company's bottom line, raising the eventual sale price by more than what KKR gives up. His next step was to start an organisation – *Ownership Works* - to promote his model more broadly, with the aim of reaching the 12 million people who work for companies owned by private equity.

In recent years, philanthropists and policymakers have expressed interest in easing the creation of employee stock ownership plans, which are regulated by the Labor Department and cover about 14 million workers, and worker cooperatives, of which only a few hundred exist. Thousands of small business owners are approaching retirement age and looking for ways to exit their firms, presenting an opportunity: Selling to employees is one way to keep capital rooted locally.

But such transactions can be complex and take longer to complete than a conventional sale, even if workers are able to find a lender with the necessary expertise. The private equity model backed by Ownership Works could rapidly broaden ownership for employees — even if those ownership stakes end when a company is resold, and only those still working there are paid.

Mr Stavros has acknowledged that private equity has problems. But he argues that his model offers workers rare chance to build wealth alongside investors, even if it doesn't mitigate inequality.

"I didn't start with the belief that this could solve this enormous economic challenge," Mr Stavros said. "I did it because I believe strongly that this is a better way to run companies, creates better cultures and leads to better outcomes for everyone involved — the company itself, the community, customers and the employees."

Some organisations have pushed instead for the creation of social impact funds that facilitate business conversions to forms of employee ownership that are meant to last in perpetuity and provide more worker leverage over decisions like a company's sale. *Fifty by Fifty*, a project developed by the nonprofit the Democracy Collaborative, posted a collection of essays titled "*Is Private Equity About to Co-Opt Employee Ownership?*"

Unlike those in an Esop, plans like Ownership Works do not come with a fiduciary responsible for representing the workers' financial interests, which Mr Stavros said was unnecessary because workers' interests are aligned with those of management. The equity grants also do not include a board seat or voting rights, and they wouldn't constitute a powerful bloc of the company's shares even if they did.

In lieu of legal representation, Ownership Works offers training and how-to guides for incorporating employee input, which it says is necessary to build an "ownership culture" that drives better results in all kinds of companies, not just those in private equity portfolios.

USA

New SEC clawback rules create a ‘two-policy corporate conundrum’

In an article for *Bloomberg Tax, Mondaq* contributor Mitchel Pahl wrote that guidance on new SEC clawback rules requiring public companies to enact policies clawing back erroneously awarded executive incentive pay, formalised the Dodd-Frank Act rules. From December 1, companies must comply if incentive pay was awarded owing to accounting errors. Many companies have adopted a second policy meeting the requirements while retaining their existing policy. Though differing in scope of covered executives and enforcement, careful drafting can conform the policies through coordinating provisions overriding the other policy when applicable. Pahl explained many pre-guidance clawback policies have different goals and methods from SEC-compliant policies. Companies can maintain their original policy achieving broader goals while adopting a second policy specifically targeting incentive pay awarded improperly owing to financial reporting mistakes. With thoughtful coordination, companies can align dual policies with SEC guidance while still using their established clawback policy.

How restaurant chain Trapper’s Sushi develops employees

In a *Nation’s Restaurant News* we learn how Farrah Scott, ceo of 15-unit sushi chain Trapper's Sushi worked her way to the top from a post as server in 11 years. She and founder Trapper O'Keeffe now aim to develop more employees into leaders and owners through the Wingfield leadership programme and employee ownership.

They will open their second employee-owned location soon, with a goal of 100 eventually. Trapper's has built an infrastructure and culture leading to lower staff turnover.

Key points include embracing evolution, prioritising consumer needs over authenticity sometimes, making chefs part of the experience and considering employees as future franchisees. Through development and employee ownership workers can become leaders or store owners, becoming brand partners.