Vol 24 No 4 January 2012

it's our business

newspad of the Employee Share Ownership Centre

Chairman warns City to curb reward excesses

Centre chairman **Malcolm Hurlston** used his opening address at the annual joint conference with the Society of Trust & Estate Practitioners (STEP) - Jersey branch - to question to what extent the City was still worth supporting. He was speaking on the day after PM David Cameron had used the veto against treaty change at the EU summit, after failing to secure sufficient safeguards against a Tobin tax on all financial transactions and the threat of yet more EU regulation.

Quoting Wall St guru Fred Schwed in his 1940 (and reprinted many times) send-up bestseller, '*Where Are The Customers' Yachts?'* the chairman asked delegates: "The City suffers from gross over-intermediation and management continues to cream the reward at the expense of the customer and the shareholder" Speaking at the Pomme d'Or Hotel, St Helier, Mr Hurlston added: "This is something the new head of the Association of British Insurers (ABI), Otto Thoresen, intends to tackle by engineering a tougher stance from institutional shareholders towards undeserved executive reward. The Centre is delighted that Mr Thoresen will be able to join us for a member dinner on February 15 this year, after our Davos conference."

The PM said later that he would clamp down on 'excessive' reward in London's financial sector as part of what he said should be bold measures to boost the country's fortunes: "While a few at the top get rewards that seem to have nothing to do with the risks they take or the effort they put in, many others are stuck on benefits, without hope or responsibility," he said in his New Year message. "So we will tackle excess in the City just as we're reforming welfare to make work pay and support families."

Fears grew in the City that the publication of tough draft legislation aimed at controlling the level of salaries and bonuses in the financial services sector is now imminent.

Mr. Hurlston told delegates at the Centre's Jersey conference that there would have been no credible opposition to large executive reward if significant growth had been achieved and enjoyed by all, but when the FTSE had been flat or even falling for so long, stratospheric salary and bonus increases were unjustified. It had been in order to tackle tax avoidance practices in connection with executive pay that the Treasury had introduced the disguised remuneration regulations, precisely a year before the Jersey conference, on December 9 2010.

As regulators force City finance houses to deliver ever-higher percentages of bonuses in the form of medium-term locked-up equity, the higher the issue of executive reward climbs on the Centre's agenda.

Juliet Halfhead of **Deloitte**, gave delegates an overview of the history of disguised remuneration. She was not surprised that interpreting the legislation had caused confusion with wording such as "where it is reasonable to suppose that in essence." Juliet said that most of the grey areas had been cleared up by the HMRC guidance, but despite this, companies were going for a 'belt and braces' approach in trying to design processes that aim both to avoid earmarking and fall within an exclusion. Juliet was exasperated that for a second December in a row employee benefit trusts were caught by rules that were not intended to affect them. This time French tax changes, which were not meant to catch corporate EBTs but do, were imposing new disclosure requirements on trustees, with a deadline of December 31 for compliance. This applied to trusts with French beneficiaries or French assets and will require a withholding obligation of 0.5 percent of the total value of the trust. Failure to disclose would mean a five percent penalty arises (see inside pages).

Joint Share Ownership Plans were explained by **William Franklin** of **Pett, Franklin & Co. LLP**, who set out the

From the Chairman

The number may be up for excessive reward in 2012 and the plunderers may quake, but a year's outlook has never been less certain for the world's economy as a whole.

Within that turmoil the enduring value of all-employee share ownership stands clear and we must do what we can make sure that options for all (via CSOPs) and other plans are widely spread. It would be good to hear more tales like those of Sports Direct and Kumba; more leaders like theirs who magnified employee reward and made it work for the companies.

Let us remember too Sarah Pickering for her contribution to our cause at the Centre and the Institute. I trust we shall find a way of commemorating her work.

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

difference between these schemes and similar set-ups, such as flowering shares, deferred payment arrangements and freezer shares. “HMRC was meant to review these geared growth arrangements, though it has all gone a quiet recently,” William reported. He told the Jersey trustees that the new reporting standard IFRS10, which deals with consolidated accounts for EBTs, will be operational from 2013 and will involve making changes in most cases – more to come on this issue later this year.
Local speaker **Jane Wycherley** of **Ogier** took delegates through practical issues her team had faced in the last year. These included trustee duty to beneficiaries in the case of a hostile takeover, the introduction of a beneficial class of shares, the introduction of a partnership into a group structure and how to act if there is a discrepancy between two versions of plan documents. Jane urged delegates to rise to the challenge of disguised remuneration by ensuring open communications channels and reviewing all linking and operating agreements.
Underwater options and share price volatility had become a part of every day life, **David Craddock**, of his eponymous consultancy, told the audience. These create problems in several ways: employee motivation drops, larger amounts of shares are required, and companies could face problems with ABI dilution limits. Companies are limited in their choices because of accounting rules for options and statutory limits for approved schemes. When handled correctly though, David said, there are ways to mitigate these problems. Both these were in essence a communications issue and whatever route companies choose they had to ensure that everything was explained to the employees and to institutional regulators, such as the ABI.
The conference was brought to a close by **Alan Judes** of **Strategic Remuneration** and **Ron Forrest** who presented a case history of share plans in **Perkins Slade Ltd,** where Ron is a non-executive director and part-owner. Two share trusts had been introduced to aid succession from the current owners to the employees – one for all employees and another for management. Despite noting increased loyalty, commitment and involvement, the case was noteworthy in that a takeover offer was accepted in 2007 but fell through due to the onset of the credit crunch. This underlined the fact that employee ownership could not guarantee a commitment to independence if the price was right for sale.
Our next event with STEP Jersey is scheduled for the morning of April 27. This half-day event will cover the latest regulatory developments affecting share schemes for trustees. Email dpoole@hurlstons.com with speaking proposals.

Death of Sarah Pickering

The Centre is greatly saddened to learn of the death of **Sarah Pickering** in the Caribbean island of St Lucia just months after her marriage to Kevin Thomas, a local islander. Apparently, Sarah, 46, slipped and plunged 100 feet to her death from a cliff-top while picking herbs for her garden in the village of Piaye. All who knew her at Centre member **Ernst & Young**, where formerly she headed the Performance & Reward team, were appalled by the news of her death. Sarah left her last UK job as md of tax advisers and Centre member **Alvarez & Marsal Taxand** late last year to set up home in the village of Piaye with Mr Thomas, 36. They had met in New York, where she was on a business trip and where he was a boutique sales assistant. On Christmas Eve they had been to an all-night party at Anchors Bar, half a mile from their large £350,000 cliff-top villa. Neighbour Eunice Sylvester said: “In the morning they returned home and Sarah began to cook some food. She went outside to get a leaf from a herb growing in her garden for the gravy and then fell down the cliff, which is about ten yards away. She was a lovely woman who was loved by everyone in the village. Sarah used to come and go between here and England but moved here about a year ago.”
Sarah was a member of the Centre’s management committee and an enthusiastic supporter of the Esop Institute. She spoke regularly at Centre conferences in London, Davos and Cannes. Malcolm Hurlston said: “We who knew Sarah shall not forget the enthusiasm, charm and expertise she brought to everything she did. She was a key player in our Esop development and there was so much more she might have done had her life not been tragically truncated. The Centre offers condolences to her family. We shall remember her.”
After a high-flying career in tax law, she became a partner at Ernst & Young from 1997 to 2008, before joining Alvarez & Marsal Taxand. Andrew Greenwood, who worked with her at AMT, said: “She was a lovely lady and it is a tragedy. We are all very upset.” Heather Crichton-Sharp, 47, who trained as a lawyer with Sarah at Leeds solicitors Simpson and Curtis in the Eighties, said her friend was “so happy” after finally finding love. She said: “It was always her wish to find a man, settle down and have children. It is a tragedy that this has happened just a few months after her wedding.”
Christine, Sarah’s mother, from Ashton-on-Ribble in Lancashire, said: “Sarah had been incredibly happy with Kevin. St Lucia was her home. She had a wonderful wedding last summer. She loved Kevin and loved the island. She was fully involved in the local community. She’d been doing some voluntary teaching at the school and had worked hard with Kevin to raise money and buy equipment for the children. She will be buried in St Lucia, where her heart is. We wish to make it clear that there has been a full police investigation and we believe that Sarah’s death is just the result of a terrible accident.”
Commissioner of the Royal St Lucia Police, Phillip Vernon Francois, said: “It is an unnatural death. She and her husband had been to a celebration. We would treat it as suspicious if we suspected foul play, but we don’t at the moment. We have not arrested anyone and there are no suspects, but that might change.” However, after a post-mortem confirmed Mrs Thomas died from head wounds, a police spokesman said: “That is the end of the matter for us. It was an accident.”

Centre names Sports Direct boss as Employee Share Champion

Mike Ashley, executive deputy chairman of **Sports Direct** and chairman of Newcastle United FC, is the Centre's choice for its new award of Employee Share Champion of the Year (2011).

Last summer, Sports Direct gave 2,000 staff one of the most generous UK employee share awards ever after the retailer hit its profits target for the second year in a row, triggering an £88m share bonus with an average payout worth £44,000 per head.

In its annual report the company described its employee performance-based share plan in detail. Keith Hellawell, non-executive chairman said: "Central to the success of the group over the last few years has been the highly motivating Employee Bonus Share Scheme. I am delighted that with our results which, I feel sure, are in some part due to this scheme. Having hit this year's underlying EBITDA targets, we are able to reward our qualifying employees with share payouts in both 2012 and 2013. This will make a meaningful difference to over 2,000 of our valued people."

Ceo Dave Forsey agreed, saying "I am especially pleased that we can again advise our employees that we have met this year's underlying EBITDA targets for the Bonus Share Scheme that covered the 2010 and 2011 financial years. As a result of attaining both years' targets they will be sharing in the Group's success by receiving Sports Direct shares in both 2012 and 2013. These were ambitious stretch targets of £155m in 2010 and £195m in 2011 where we actually attained £160.4m and £200.4m. We thank our colleagues for all their efforts to achieve these results."

Further share awards linked to performance were announced at the same time: "Due to the success of the Bonus Share Scheme in 2010 and 2011, and the fact that it underpinned the Group's performance over the past two years, the company will be launching a four year scheme covering the 2012, 2013, 2014 and 2015 financial years."

Announcing the first winner of the Employee Share Champion award, Centre chairman Malcolm Hurlston said: *"The high purpose of employee ownership is to spread wealth in return for effort. These are the true wages of capital. Many companies have share schemes but too often the awards are concentrated on middle and senior management, ignoring the key contribution, which can come from the shop floor.*

"With time, awards can lose impact through becoming business as usual and this is where advocacy from the top, linked with the quantum of employees' gains, has earned our award for Mike Ashley."

Mr Ashley himself is being lined up for a £12m shares windfall after his chain reported more robust trading. The group, which has 397 stores and owns brands including Slazenger, Donnay and Karrimor, said underlying earnings rose two percent to £139.2m in the 26 weeks to October 23, keeping it on track for a full-year haul of £215m. That is a key milestone for the staff bonus scheme, but under new proposals the chain's executive deputy chairman, who currently receives no pay, stands to be granted six million shares, currently worth about £12m in 2018 if the group achieves £225m this year and further stretching targets over the following two years. Mr Ashley netted £929m in a single day in February 2007 after selling 43 percent of the business he founded. The group said retail revenues increased by more than eight percent to £697m after a strong performance in an "especially fragile consumer environment". Mr Ashley's 'super-stretch' targets, which would need the approval of shareholders this year, will only pay out if the company hits more demanding targets than those for its staff bonus scheme.

Congratulations also to Centre member **YBS Share Plans'** clients - Cable and Wireless Worldwide, Invensys, MoneySupermarket & Henderson Global Investors - as they celebrated success at the *ifs*ProShare Annual Awards.

DAVOS Feb 2 & 3: TIME TO REGISTER

Western governments are now promising to redefine the parameters of executive reward packages. By the time the Centre holds its **Global Employee Equity Forum**, in the five-star **Steigenberger Belvedere Hotel** in Davos Platz on **Thursday February 2** and **Friday February 3**, the legislative landscape for reward consultants could be ominously different. This annual event, held in the slipstream of the World Economic Forum, presents a major opportunity for reward consultants and HR managers to ensure they are au fait with how latest legislative and regulatory reward moves will impact at corporate level. Expert speakers from reward consultancies will discuss the imminent changes with delegates. We ask whether existing regulations on executive reward are working properly and whether any changes need to be made. Are there sensible limits to the percentage of equity awards that could and should be deferred? Are remuneration committees doing their job properly and is it time to make AGM shareholder votes against remuneration reports binding, rather than merely advisory?

Many other key issues will come under the microscope at our two-day gathering in Davos, at which delegates put their own points of view during open debates alongside the formal presentations. Forty registrations have been received to date for this popular event. Two American speakers - David Hildebrandt, Partner, Kirton & McConkie, Salt Lake City, USA and chairman of the International Association for Financial Participation, together with Eric S Smith, chairman and ceo, Consulting Services Support Corporation, Michigan, USA, will address the current state of US Share Ownership Plans - focussing on *'Global Fiduciary Best Practices and Failure - What Europe should consider*.'

A case study presentation about the Centre award-winning worldwide stock purchase plan of telecoms giant Ericsson will be a major highlight of the Davos programme. It will be delivered by Martyn Drake, MD of Computershare UK, which administers the plan in the 100 countries in which Ericsson operates. Another interesting case study will be led by Richard Nelson of Howells Associates, who will introduce executives from client Imagination Technologies to talk about the way the company has engaged with its employees using share plans as its key remuneration tool.

Dr. Marco Cilento from the Confederazione Italiana Sindacati dei Lavoratori (CISL) will address delegates on '*Employee financial participation in the Italian automotive industry,'* focussing on: attitudes of the employers, the trade unions and their members towards Eso; what type is installed in the car factories and the significance of this development in the evolution of Italian industrial relations. Martin Osborne-Shaw, of Killik Employee Services, will make the case for a major boost in the level and quality of financial education made available to employees in the workplace.

Other Davos speakers are drawn from: Baker & McKenzie, BDO Human Capital, Capita Registrars, Henderson Global Investors, Macfarlanes LLP, Minter Ellison, MM & K, Norse Solutions, Pett, Franklin & Co. LLP, RBC Corporate Employee & Executive Solutions and Strategic Remuneration. The programme can be reviewed in detail on the Centre website at: www. hurlstons.com/esop and click onto 'events.' You can download our e-brochure, co-sponsored by member trustees **Appleby Global** and by **RBC cees** and you can reserve your delegate place online too.

Our Package Deal pays for two nights (Feb 1 & 2) half-board accommodation in the five-star Steigenberger Belvedere Hotel, Davos Platz, admission to all conference sessions, light refreshments, cocktail party (partners welcome) and bound copy of speech highlights.

Delegates: Members -

Practitioners (service providers) £925
Equity plan issuers £535

Non members -

Practitioners (service providers) £1395
Equity plan issuers £685

No VAT or other sales tax is payable on these fees, as the event takes place outside the UK.

There will be a pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. The programme includes extended afternoon breaks on Thursday and Friday, so that keen skiers can hit the slopes after the morning sessions. Packed lunches are available on demand and idem activity schedules for non-participating partners and/or visiting friends and relatives. You still have time, just, in which to register for this event. Please email Fred Hackworth, Centre international director, asap at: fhackworth@hurlstons.com to reserve your room in this superb belle époque hotel and your conference seat.

Centre-IoD Conference

The Centre will hold a joint conference with the Institute of Directors on May 15 on the subject of employee share schemes for small and medium businesses. This full-day conference will take place at the Institute's premises in London.

Speaking proposals are being considered for this event. The agenda will be designed to take directors of fast-growing businesses on a step by step journey through the processes involved in selecting and implementing the right share incentive plan for their business. Specifically we would like to receive papers on: implementation nuts and bolts, options for those who don't qualify for EMI, making the plan feel real, accounting for share plans/ share valuation in unquoted companies, succession planning & pitfalls and practical tips. Company case studies with partners from an SME will be given priority. Please contact David Poole - dpoole@hurlstons.com.

Financial education and share schemes

How do you make sure employees fully understand the benefits being offered to them through share schemes? How will share schemes hold up when auto-enrollment begins this year? What is best practice to ensure your employees feel in control of their money at a share scheme offering and maturity? These are some of the questions which will be addressed at a half-day event on financial education and share schemes which will be held by the Centre at Computershare's offices in Vintners' Place, London on March 29.

A case study will be given by Ann Govier of **Marks & Spencers** and delegates will hear of the support offered in this area by the **Money Advice Service.** There are still a couple of slots available for speaker submissions - email dpoole@hurlstons.com.

Tickets are on sale for this event 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.

Sids hang on to Thatcher gas shares

December marked the 25th anniversary of the privatisation of British Gas, when millions of people, including many BG employees, took advantage of the chance to buy shares in the company. Following a long 'Tell Sid' campaign, 425m shares were put up for sale, creating millions of first time shareholders in the UK. The Thatcher era produced 20m new shareholders through its privatisations, employee share ownership schemes and de-mutualisations. By 1987, 20 percent of the UK population were shareholders, a significant increase from the seven percent in 1976. It was the biggest rise in new shareholders the UK had ever seen. If 100 British Gas shares were bought at floatation in December 1986 at a total cost of £135, today they would be worth £1686, a remarkable return for 25 years of investment. Whilst some of the newly created shareholders cashed in and sold their shares straight away, there are still many people, among them ex BG employees, who have shares from the 80s, paper certificates filed away in lofts or bottom drawers and who are unaware of how much they may be worth (free of City over-intermediation - see above.)

ESOT urged to help rescue Eircom

The Communications Workers Union has urged Eircom stakeholders and lenders to consider Singapore Technologies Telemedia's (STT's) offer to restructure and ultimately save the business. Eircom's lenders have voted to extend a covenant waiver on the company's massive €350m debt until January 31, enabling it to avoid liquidation. There are several proposals on the table. Eircom's majority shareholder STT has offered to buy back the business, provide a €200m rescue investment and is in talks with the Employee Share Ownership Trust, which owns one-third of Eircom shares, about a joint bid. Steve Fitzpatrick, general secretary of the CWU, said: "This proposal represents the best opportunity to rebuild Eircom and provide a secure future for its customers and its workforce. STT are the first telecommunications company to be involved in Eircom since its disastrous privatisation and there is little doubt that the company needs the industry know-how and technical ability that STT brings to the table." He said: "STT has worked at developing a professional relationship with the industry in Ireland, including the regulator ComReg and the Department of Communications. Its investment plans including the roll out of a next-generation broadband network which is an absolute necessity for Ireland, and critical to future inward investment and the ultimate recovery of the Irish economy." Fitzpatrick urged all the parties engaged in negotiations on Eircom's future to redouble their efforts so that finality and closure can be achieved from the ongoing restructuring process. He said: "It has been and is a very worrying and stressful time for all of the staff who had committed so much to keeping the business on track over the last number of years through pension reductions, pay freezes and pay cuts. "It is now time for the continuous distraction of these long-running financial structural discussions to be brought to a conclusion and allow the company to be run in an straightforward commercial manner."

Eso and the Finance Bill

HM Treasury published consultative draft legislation for the Finance Bill 2012, reported Centre member **Postlethwaite**, which summarised developments that might affect employee share schemes, participants in them and the entities which operate them. HMRC has responded to the consultation on tax avoidance schemes. Although draft legislation to implement the proposed measures on high-risk tax avoidance schemes will **not** be included in the Finance Bill, the Government has undertaken to continue discussing the issues with interested parties (such as professional advisers and the TUC) and will provide an update in the 2012 Budget. Under the consultation, the most contrived and aggressive tax avoidance schemes would be added to an HMRC list, users would have to disclose the use of listed schemes and an additional tax charge would be imposed to counter the cash flow advantage to the taxpayer of retaining the disputed tax until the matter is resolved. The Government announced that it was introducing a new scheme -Seed Enterprise Investment Scheme (SEIS) - from April 2012 to encourage investment in new start-up companies. SEIS will provide an enhanced version of the existing Enterprise Investment Scheme: *Income tax relief of 50 percent for individuals who invest in shares in qualifying companies, with an annual investment limit of £100,000; Capital Gains Tax exemption on gains realised on disposals of assets in 2012-13 and invested through SEIS in that year.* There is to be a cumulative investment limit of £150,000 for the company, whose total assets, before investment, must be below £200,000. The 50 percent rate of relief is more generous than many expected, since an earlier proposal was for 40 percent tax relief. In contrast, the investment limits may seem rather less generous than anticipated. The Government confirmed that the 50 percent rate of relief would be available irrespective of the investor's marginal income tax rate.

For the tax year 2012-13, the CGT annual tax-exempt amount will be frozen at the 2011/12 level (£10,600 for individuals and personal representatives and £5,300 for trustees). The Government confirmed that legislation would be introduced in the Finance Bill to increase the annual exempt amount in future years automatically in line with the consumer price index.

The income tax personal allowance for 2012-13 will be increased from £7,415 in 2011-12 to £8,105. The basic rate limit will be reduced from £35,000 to £34,370. The additional rate threshold will remain at £150,000. For 2012-13, the employee/primary Class 1 NICs upper earnings limit will remain at £817 per week and the employer/secondary threshold will be increased from £136 to £144 per week. There are no changes to the rates of NICs.

The ISA overall limit will be increased from £10,680 to £11,280 and the cash limit will be increased from £5,340 to £5,640.

The **Chancellor of the Exchequer** presents his **Budget** in the Commons on Wednesday 21 March at 12.30 pm

Massive Esop payout at SA iron ore mine

Life is getting a lot better for people like Christopher Mocwane, an employee at one of the world's largest iron ore mines, in the middle of the Kalahari desert. Thanks to an Eso scheme, the 47-year-old, who earns 7,000 rand (£560) a month, is about to receive a 576,045-rand (£46,157) windfall. "I'm going to buy myself a house. The one where I live now, I'll fix it and give it to my mother," he told *Reuters*, wiping the sweat off his forehead in the scorching heat. "She was very happy when I told her. My children are still small, but I will now be able to send them to school when they grow up," he added. Mocwane is one of 6,200 employees at Kumba Iron Ore due to benefit from the plan aimed at ensuring all employees share the profits made by the iron ore producer during the past five years. A unit of global mining company **Anglo American**, Kumba has already paid out 279m rand in dividends to the same employees, an average of 55,000 rand (£4,407) per person over five years. The lump sum, paid out in December, was linked to the share price on November 17, and totalled 345,000 rand (£27,644) per employee after taxes. Those who have not been with Kumba for the full five years got less. "I've tried to fix my house. We had a problem with water, and now we have water," said Mocwane, who has worked at the open-mine for 17 years, first as a cleaner and now truck driver. “For many years I didn’t have a car, but I have one now. I can see a lot of difference in my life,” he said. Kumba’s “Envision” programme has become a poster child for South Africa’s Black Economic Empowerment scheme aimed at giving blacks a stake in the economy. Under this scheme, companies are required to meet quotas on black ownership, employment and procurement. Many have invested millions to build houses, hospitals and schools, but unions say Kumba’s solution is unique. “Every benefit the company is earning, (the employees) are part of it ... and it's not just a one-off,” said Tebogo Chakapedi, shop steward of the National Union of Mineworkers. “We would like that at a national level all companies adapt this,” Chakapedi added. Kumba’s scheme was established when the iron ore assets of then Kumba Resources were unbundled in the Sishen Iron Ore Company in 2006. Luckily for the employees, the company's share price has since soared thanks to rising prices of iron ore --from 120 rand in 2006 when the scheme was launched to 502 rand on Dec 2.

Admiral behaviour

For seven years, Admiral, poster boy for the employee share ownership world, could not put a foot wrong. The motor insurer floated in August 2004 at 275p and by August last year, the shares were more than 1500p. The company, which owns brands such as confused.com and elephant, was doing well and investors were sitting pretty. Then in November, ceo Henry Engelhardt was forced to admit that profits for 2011 would be lower than expected, thanks to a surge in bodily injury claims. The warning shocked the market, prompting concern about Admiral’s results not just in 2011 but beyond. The share price reaction was brutal. The stock, which had already slipped back over the summer, slumped from 1193p to 820p over the next two days. Times like these can be difficult for directors, particularly those who have been with a company from the start, such as Engelhardt and chief operating officer David Stevens. However, both have used hard cash to underline their confidence in the firm. Engelhardt spent £8.74m buying one million Admiral shares at 874p while Stevens spent £1.9m buying 225,000 shares at 826p. Chairman Alistair Lyons bought 10,000 shares and four other directors bought a further 55,000 shares between them at prices between 800p and 890p. These findings emerge from an analysis of significant trades listed on directorsdeals.com. While insider dealing is illegal, seeing what directors do with their own cash can be a revealing indication of their confidence, or lack of it, in the future.

Belt tightening

More than 150 workers at a North Lincolnshire steel firm are taking a 50 percent pay cut to help their employer stay in business. Staff at Caparo Merchant Bar (CMB) in Scunthorpe have agreed to take an extended holiday over Christmas and new year. Many returned to work on 3 January, after taking a longer break than usual, at half their normal wage. Andy McGarrigle, from the Community Trade Union at CMB in Scunthorpe, said the company was feeling the effects of the recession: “We do see this as a short-term problem, we’re hopeful that we can see the company through these difficulties and by working with them we can hopefully come out in the new year and see the company begin to grow again. We understand the economic realities and the problems across the economy, across steel-making in particular. It is a difficult time. It’s not an easy decision to take but we’ve got a strong business down there and we've got some really high skilled workers.”

On the move

Lin Homer will be the next ceo at HMRC. Ms Homer, who is currently Permanent Secretary at the Department for Transport, takes over from Dame Lesley Strathie, who stepped down last November on health grounds. **Dave Hartnett**, Permanent Secretary for UK Tax, will retire this summer.

Patrick Burns has left the Employee Ownership Association, of which he was executive director, after almost eight years at the helm. He is now director of mutuals development with an EOA member company, Prospects, a provider of public services, who themselves became employee-owned a few months ago. In addition, Patrick has assumed an associate role with the Oxford Centre for Mutual & Employee Ownership, based at the University’s Kellogg College, and with the Baxi Partnership. His new email address is: Patrick. burns@prospects.co.uk and his mobile number remains 07976 355919

Eso succession Down Under

Manufacturers find themselves looking for a viable exit from their businesses at a time when markets for their products and services are disappearing offshore. Unable to find buyers prepared to pay a fair price for the value they have created, or family members willing to take the reins, sadly more and more face the terrible alternative of simply turning out the lights and walking away. Engineering plant **C-Mac**, based at Girraween in western Sydney, NSW, has bucked the growing national SME trend to wind up on owner retirement with the introduction of an Esop offered to all its employees. It’s an employee engagement strategy that has already seen an 18 per cent hike in productivity at the plant as well as help the owners plan for retirement and contrasts with research showing 38 percent of businesses aren’t aware of Esops as a succession plan option while a further 44 percent consider employee buyouts as unlikely or very unlikely. At C-Mac Industries, the Esop was very well received by the employees with all but two employees now participating in the company and earning equity and involvement in the business as well as an income. “This plan is a great example of the combination of enthusiastic employees … and owners who can see the benefits of increased participation and who are prepared to create a win-win environment for all stakeholders,” said Craig West, CEO of Succession Plus and designer of the C-MAC Esop. “People are now saying ‘us’ instead of ‘me’ and asking, ‘what do you want us to do?’” explains Steve Grlyak, C-MAC’s manufacturing manager. “Job security is a key motivator and we do not want to lose employees with skills. There are now charts in the lunch room so everyone can see how the business is doing. The change has been unbelievable. As a manager with job security and a share in the business it’s a great pleasure to manage a team who want you to lead with ideas.” The company’s founding family members are the principal shareholders but see the benefits of a gradual sale of shares to employees based on profit share as well as the increased involvement of key staff within the management team.

BoE Governor demands bonus shake-up

The **Bank of England** warned lenders it is considering changes to the way bonuses are measured to make it far harder for big-hitting investment bankers to justify their multi-million pound awards. The threat follows the central bank’s decision to force British lenders to limit bonuses this year in order to shore up their balance sheets against the looming eurozone crisis.

According to the Centre for Economic & Business Research, City bonuses in 2010 came to £6.7bn and fell to £4.2bn last year. At their peak in 2006 and 2007, £11bn was paid.

The threat of a bonus crackdown was made in the Bank's Financial Stability Report. It said the Financial Policy Committee (FPC), which has the power to set new rules, had “noted that performance metrics, such as return on equity targets, that take little account of the risks taken to achieve them could be distorting incentives.” It added: “Given the importance the committee attaches to this issue, it agreed to consider it in greater depth at a future meeting. It would consider, among other things, the extent to which such performance metrics influence … remuneration.” Banks should reduce bonus payouts this year in order to boost their capital reserves and protect themselves against the eurozone crisis, the BoE governor Sir Mervyn King warned. Speaking at the launch of the Financial Stability Report, King said that banks should bolster their capital in view of the debt crisis in Europe. “In the light of the exceptionally threatening environment, and the weaker outlook for banks’ profits, the committee judges that stronger action is needed to build the resilience of the UK financial system,” read the report. “Success in raising capital levels could maintain the confidence of funding providers and the lending capacity of the system.” King explained that many banks would only be able to achieve this by reducing ‘distributions’ to both staff – in the form of bonuses – and shareholders in the form of dividends. “If earnings are insufficient to build capital levels further, banks should limit distributions,” said King. “No one who looks at the current position could surely deny that it is extraordinarily dangerous and threatening.” The report of the committee, which is chaired by King, said that banks were still using metrics to determine bonuses that could be counter-productive. “The committee noted that the continued use of performance metrics, such as return on equity targets, that take little account of the risks taken to achieve them could be distorting banks’ incentives to boost their capital levels,” said the report. It reiterated advice to banks that they should not pursue the alternative approach of raising capital – that of cutting lending to households and businesses - which would endanger the economy further.

The disclosure appears to be an early warning that reform is coming. At least two leading members of the FPC have been campaigning for change for some time, endorsed by the Bank. Robert Jenkins, an external member, said earlier this month: “Return on equity is the wrong target. Over the last ten to 15 years it has helped to make many bankers rich and loyal shareholders poor.” Although technical, the reform would have far-reaching implications. ***Return on Equity***, or RoE, rewards bankers for taking risk that in the recent crisis was ultimately borne by taxpayers.

Instead, both Andy Haldane, the Bank’s executive director of financial stability and a member of the FPC, and Mr Jenkins believe that bonuses should be measured against ***Return on Assets***, or RoA, which adjusts for risk: “While the risks have typically been borne by wider society, the returns have been harvested by bank shareholders and managers,” Mr Haldane has said. According to his analysis, the effect on bonuses from switching targets would potentially be huge. Between 1989 and 2007, in which time there was “increasing focus on RoE as a performance target”, the average pay of the top seven US investment bank bosses rose from $2.8m to $26m. If their performance had been linked to RoA, it would have increased to just $3.4m. “Rather than rising [from 100 times] to 500 times median US household income, it would have fallen to around 68 times,” Mr Haldane said. The difference can be illustrated using a mortgage. If a house price rises in value from £100,000 to £110,000, the RoA is just £10,000, or ten percent. But if it was bought with a £10,000 deposit and £90,000 debt, the RoE on the £10,000 of equity is 100 percent. However, where homeowners bear the risk of a fall in house prices, bankers do not. According to Mr Haldane: “In effect, RoE is skill multiplied by luck.”

Robert Talbut, chief investment officer at fund manager **Royal London Asset Management**, which manages £40bn, said: “This is something shareholders have been talking about with management for about 12 months. RoA would lead to reducing the size of the overall bonus pool because it is a harder target for them to meet. It is a more risk-averse measure of how banks are actually performing.”

The BoE cannot force banks to cut bonuses in its drive to improve the sector’s capital position, the British Bankers’Association said in response to the Fiscal Stability Report. However, the BBA was derided in the media after claiming that the days of very large bonus awards in UK banks were now over.

Answering a question over bonuses, Hector Sants, chief executive of the **FSA**, said: “We should be clear here that the FSA doesn’t have a power to specifically limit the bonus pool per se. “But it does have the power to ensure that banks have retained the right amount of capital - and clearly, by exercising that power, we can constrain their total distributions."

Deputy PM **Nick Clegg** in a speech to Demos vowed to clamp down on excessive bank bonuses, saying: "On the eve of bonus season, let no one be in any doubt about our determination to use our clout as the major shareholder in these banks to block any irresponsible payments, or any rewards for failure.We cannot rely on moral individuals to deliver a responsible capitalism. Nor can responsibility be mandated from on high, by the state." He said he wanted "shareholders with real power over boards, workers with a real stake in their businesses – for example, through employee ownership. Only by rewiring the power relations in our economy can we build a responsible capitalism".

Recent research showed FTSE 100 director pay surged 49 percent over the past year, compared to two percent for rank-and-file employees.

The eight highest-paid executives outside boardroom level of Britain's biggest banks would have to reveal their pay packets under new proposals revealed by the **Treasury**, which launched a consultation on the proposal as it looks to tackle "unacceptable" bank bonuses by improving pay transparency at the country's largest banks. **Mark Hoban**, financial secretary to the Treasury, said the move would give shareholders more power to "hold banks to account" over their bonus structures. The announcement came after influential shareholder group the **Association of British Insurers** (ABI) warned banks it can no longer be "business as usual" for the banking sector when they decide how much to pay their staff. Meanwhile, Chancellor George Osborne echoed comments made by Sir Mervyn King and urged banks to store cash this winter rather than pay staff bonuses. The Treasury said improving transparency for senior executives who manage risk will help provide shareholders with more tools to hold senior management to account. The proposals would aim to improve transparency at an estimated 15 banks, including the largest UK institutions and the UK operations of large foreign banks. The consultation, which ends on February 14, follows the introduction of the bank levy, the Project Merlin lending agreement and the Government-appointed Independent Commission on Banking, which has called for a raft of changes within the industry.

The ABI told banks to award smaller bonuses to investment bankers without resorting to increasing base pay to make up for it. The ABI said that now is the time to curb total pay because bankers are unlikely to quit for a competitor, with very few banks hiring and most cutting jobs. The letter is the latest development in the intensifying row over 'out-of-control' executive pay and comes as the Bank of England is considering changes to the way bankers' bonuses are measured, making it far harder to justify multi-million pound awards.

The letter from the ABI, sent to UK listed banks, said: "Our members are concerned about the level of returns that shareholders receive compared to the returns given to employees. Members believe that in recent years this balance has been inequitable, with too much value being delivered to employees in contrast to the dividends paid to shareholders. The reduction in employee pay-out ratios needs to be achieved by reducing individual remuneration pay-outs to highly paid employees, including executive directors, and not by just reducing employee numbers."

Shareholders and employees would get greater power over boardroom pay if, as expected, the Government widens the membership of remuneration committees to include employees. The ABI is against having employees sit on pay committees as they would not necessarily act in shareholders' interests. It stopped short of calling for a cap on bankers' pay, or for setting ratios between top and bottom earners, recognising each bank is different.

In a list of demands, the ABI warned banks to fundamentally alter the way they reward staff. Among its requests, the shareholder group said that:

- Bonus pools and individual awards should be reduced while the economic crisis persists
- Shareholders should be given a bigger slice of the cake by reducing employee pay out ratios
- Any capital retention needed to meet new regulatory requirements should not be paid for solely by a reduction in dividend payments.
- Remuneration committees must be prepared to scale back long-term incentive grants in some cases
- Banks should not use discretion to increase bonuses because of "events outside of management's control".

The ABI letter said: "It is our members' view that it can no longer be business as usual for this remuneration round. They expect to see significantly lower bonus pools and individual awards given the current market circumstances. It is essential that all banks take, and are seen to take, a responsible approach."

The UK's biggest industry lobby group joined the **Institute of Directors** (*see previous issue*) in demanding reforms to executive reward structures. Executive pay must be tied to performance, concluded the **Confederation of British Industry**, following a report into executive remuneration. Public anger over corporate excess led to *Occupy* protesters storming the Xstrata mining headquarters where its ceo Mick Davis made £18.5m in the last financial year. However previous attempts to curtail bonuses in the city met little success. Commenting in response to the CBI's report, Business Secretary Vince Cable said: "The CBI is reflecting the views of growing numbers in the business community who agree that executives should be rewarded for contributing to the success of their company, but that extravagant rewards for failure need to stop. Their support for measures such as increased transparency, clawback mechanisms to prevent payments for failure, and reform of the make-up of remuneration committees is welcome. I am grateful to the CBI for their leadership in this debate, putting it on the side of 'responsible capitalism'. I hope they will now work with their members to promote the changes we need to see. The Government is currently considering all the responses we've received and we will announce the next steps early next year."

The Big Six energy companies have walked into a political storm over executive pay amid revelations that their bosses are earning up to £4m a year as an increasing number of their customers are being pushed into fuel poverty. Phil Bentley, ceo of **British Gas**, led the field with a basic salary of £1.3m in 2010, which was enhanced by the exercise of share options with a "theoretical aggregate gain" of a further £2.7m. Sam Laidlaw, ceo of the wider **Centrica** group that owns British Gas but also other businesses, earned a basic salary of £2m last year with a further £250,000 paid into his pension. Laidlaw also held at the end of last year an additional 711,642 shares awarded by Centrica – worth a further £2m at current prices. Executives in the business are awarded shares under a variety of different schemes.

SSE, formerly Scottish & Southern Energy, paid its ceo, Ian Marchant, £1.2m in the last financial year plus a £126,000 boost from deferred shares. Marchant's pension totalled £6.1m as of March 2011 and he had 330,000 non-vested shares at the end of the last financial year worth about £4m. Companies insist their bosses deserve their rewards for delivering strong financial performance, arguing that they are not paid nearly as much as bankers.

Labour MP John Robertson, who has long campaigned on the issue of fuel poverty, said the level of salaries had become "outrageous" and needed to be curbed. It is "simply disgusting at a time when people are struggling to heat their homes, these energy barons are treating them like serfs, and the government and the regulator are letting them get away with it," he said. "It's a win-win situation for these guys when they get paid in shares; as even if the share price goes down by a penny they won't owe any money in capital gains tax, whereas if they were given a pay rise of a similar amount then they would have to pay tax on it. It's another con on customers by well-dressed, overpaid con-artists."

While British Gas and SSE are British-based businesses that publish details of salaries in annual reports, it is more difficult to obtain details of others among the Big Six as they are run from Europe. **Scottish Power**, a subsidiary of Spain's Iberdrola, has just appointed a new ceo but his salary will only be disclosed when the annual report is published next year. Johannes Teyssen, ceo of the German utility E.ON, earned a basic salary of €1m (about £860,000) in 2010 but Bloomberg Businessweek put the value of his total package, including bonuses and share options, at €4.2m (£3.6m).

The regulator, **Ofgem**, which has been under fire for treating the companies too leniently, pays its top team handsomely – from the public purse. Alistair Buchanan, the Ofgem director general, earns more than £200,000, while two senior partners are paid £180,000 and £184,999 a piece. The chairman, Lord Mogg, takes home more than £210,000 for three and a half days a week. An Ofgem spokesman said executive pay and bonuses were set according to Cabinet Office rules in the same way as for all senior civil servants. He said that base pay had been frozen and the scope and level of bonus awards reduced. "Ofgem is unique among Britain's regulators in capping its cost increases to 3 percent below inflation. This and other measures have saved more than £11.9m in the first five years of a self-imposed cost control (2005-10). Ofgem will keep capping cost increases to 3 percent below inflation in the next control period (2010-15) with planned savings of £12.5m," the spokesman said.

A spokesman for Centrica said Laidlaw "leads a company making complex investments in a global energy market to secure future energy supplies… we are competing in a global market for people with Sam's rare set of skills." The company argues the remuneration is in line with others in the FTSE 100 index of leading shares but "significantly less" than those given to bankers such as Stephen Hester, ceo of **Royal Bank of Scotland**.

Senior executives at **Northern Rock** look set for early pay out of their long-term incentive scheme, following the sale of the state-owned mortgage lender to Virgin Money. The Rock's 2010 annual report stated that a "successful exit from temporary public ownership" would trigger early vesting of bonuses up to 75 percent of their base salaries.

Executives in **Dutch** semi-public sector organisations such as housing corporations and hospitals will soon no longer be eligible for bonuses now that parliament has backed a Labour party motion calling for a ban. Dutch MPs believe extras, which are paid for by the taxpayer, are "inappropriate," said MP Pierre Heijnen. "Managers who want to work in the public sector don't need to be given extra money to do their best to deliver as good a service as possible," he added. The vote was the latest among moves to introduce formal controls on Dutch public sector salaries following disquiet about large pay packages in some sectors. MPs voted in favour of a proposal to limit the pay of supervisory board chairmen at public sector organisations to 7.5 percent of the average executive pay package, while ordinary members will have a five percent limit. In addition, healthcare institutions and good causes will no longer be able to pay executives more than the prime minister. For most public sector jobs, an informal limit equivalent to the prime minister's salary of €190,000 is already standard.

Despite many companies in North America anticipating a decline in shareholder value in 2011, a majority expect to pay executive bonuses that are as large as or larger than last year's awards. Additionally, the majority of companies plan to fund this year's bonuses at or above target levels, reflecting strong operating results, according to a survey by **Towers Watson**, the global professional services company and Centre member. The Towers Watson survey of 265 mid-size and large organizations found 61 percent expect their total shareholder return for 2011 to decline or remain flat. Meantime, the same percentage expect their annual bonus pools for 2011 to be as large or larger than those for 2010. Additionally, 58 percent expect to fund their annual incentive plans at or above target levels based on their companies' year-to-date performance. Nearly half of respondents expect long-term incentive plans that are tied to explicit performance conditions to be funded at or above target levels based on year-to-date performance. “Given that many companies have seen strong financial results this year, it’s no surprise that the majority of companies will fund their incentive pools at or above target levels,” said Doug Friske, global head of executive compensation consulting at Towers Watson. “However, for companies that must submit their pay programmes to a shareholder vote, the prospect of above-target incentive awards combined with shareholder losses could pose complications and communication challenges as they head into the 2012 proxy season.”

- The percentage of compensation committees expected to exercise discretion to override their executive incentive plan formulas has declined sharply from 35 percent three years ago to only 13 percent this year.
- Most companies expect to keep the same incentive plan measures and designs for the next performance cycle.
- One in four companies are planning to change the design of their long-term incentive plans for 2012, with the vast majority of those increasing the use of performance-based restricted stock and restricted stock/unit grants.

“In the say-on-pay world, the potential for real or perceived disconnects between executive rewards and shareholder value creation puts an even greater premium on proper incentive design, effective executive compensation disclosures and overall shareholder engagement efforts. The complexity of today's executive incentives, combined with the fact that the timing of incentive payouts and performance can vary between different forms of pay, really puts companies under the gun to make sure they have a clear and compelling rationale behind their programs,” said Friske.

Bank bonus claw back

The partly-state-owned **Lloyds Banking Group** is attempting to claw back up to half of the £1.45m bonus awarded to Eric Daniels, its former ceo. Lawyers acting for Lloyds’ remuneration committee have written to Daniels and other senior executives about the bank’s intention to claw back parts of the bonuses announced last February. The decision by Lloyds’ boardroom remuneration committee was triggered by the £3.2bn hit that the bank took for mis-selling payment protection insurance (PPI), the latest in a series of scandals to hit Britain’s banking sector. The loss was larger than the City had anticipated and was one of the first significant announcements by Lloyds under Daniels’ successor as ceo, Antonio Horta-Osorio. It marked the first time that a high street bank has attempted to invoke a clawback provision in the contract of a main board executive. At Lloyds’ agm last May, Sir Win Bischoff, Lloyds’ chairman, hinted that it would examine such a plan, but the letter provided confirmation that it is serious about pursuing it. “The implications [of the PPI charge] on compensation are being considered by the remuneration committee and will be determined by the board in due course,” Bischoff said at the agm. Technically, the money probably won’t have to be reclaimed from Daniels since under the City regulator’s new bonus rules, the majority of bonus payments awarded in one year have to be deferred for several years. UK Financial Investments, which manages the taxpayer’s stakes in Britain’s bailed-out banks, and the Financial Services Authority are both aware of Lloyds’ intention. Other former senior Lloyds executives, including Helen Weir, who ran the retail banking operation, have received similar letters from the bank. In total, Lloyds’ executive directors were allotted just over £5m in performance-related payments for 2010, although not all of the five directors who shared these awards will be subject to the claw back.

But Lloyds faced another dilemma: how to present the recruitment of George Culmer, from insurer RSA, as its new finance director. Culmer has already resigned from RSA so clearly wants the job. But his appointment had not been confirmed by Lloyds well into December. Among the problems to be solved was his signing-on fee, which could amount to £4.5m, to buy him out of performance-related schemes at RSA.

Directors of banks that fail in future should face "personal consequences" such as automatic bans, fines or the return of remuneration, the chairman of the Financial Services Authority (FSA) said in a report on the near collapse of the **Royal Bank of Scotland**. Lord Turner said that banks should be subject to stricter risk management requirements than other companies because the failure of banks was: "a public concern, not just a concern for shareholders,” reported Centre member **Pinsent Masons**. “In a market economy, companies take risks on behalf of shareholders and if they make mistakes, it is for shareholders to sanction the management and board by firing them. But banks are different, because excessive risk-taking by banks...can result in bank failure, taxpayer losses, and wider economic harm," added Lord Turner. He recommended the introduction of either a strict liability approach, which would make it more likely that the failure of a bank would be followed by successful enforcement actions, or an automatic incentives-based approach with either automatic bans *or* major changes to remuneration to ensure that a "significant proportion" of pay would be deferred and forfeited in the event of a bank failure.

Offshore funds manual to be updated

HMRC is updating its Offshore Funds Manual (currently reflecting only the regulations in 2009) and a revised draft version is expected shortly, said Eloise Walker of **Pinsent Masons**. “Hopefully, it will address some practical issues, such as equalization of share values after distributions and/or redemptions and currency exchange, and give us all a clearer roadmap going forward.”

French trusts

Last summer, the French Finance Act was amended to include new rules affecting trusts, which are viewed by many as Draconian. The rules came into effect on January 1 2012; therefore anyone affected should urgently consider how the rules might affect them, wrote Robert Christensen of Centre member **Volaw Trust & Corporate Services Ltd.** The rules are wide-ranging, and mainly concern new tax impositions and disclosure obligations for trustees. There are further implications for inheritance tax and French Wealth Tax in relation to trust assets. A new tax has been introduced, specific to trusts, which levies a rate of 0.5 percent on the fair assessed value of the rights and assets of the trust. Those liable to pay the new tax are defined as "individual persons constituting or profiting from a trust", and include the administrator, settlor or beneficiary of a trust with a tax residence or domicile in France, or those with an interest in any trust containing assets situated in France. The new rules oblige trustees to provide all relevant information on the rights and assets in trust as at January 1 of each calendar year to the French Tax Administration by June 15 that same year, together with the corresponding payment of the special tax. Exemptions to the new tax include: when interest in trust assets has been declared for wealth tax purposes by the settlor or beneficiary; or when such interest is reported in accordance with the new disclosure obligations. French financial investments are generally excluded. The new disclosure obligations affect trustees, who are responsible for declaring the trust to the tax authorities. Even if there is only one French resident beneficiary and no assets situated in France, trustees are obliged to file a full disclosure of the existence, details and provisions of the trust, and provide an assessment of the fair value of all the rights and assets in trust on 1 January 2012. Failure to comply with the disclosure requirements could lead to penalties equal to the higher of €10,000 or five percent of the assessed fair value of the rights and assets of the trust. Whilst this penalty would be imposed on the trustees, the settlor and the beneficiaries would also be jointly and severally responsible for its payment. Centre member **Ogier** too is working with clients on the same new French trust rules. "These new rules are far reaching and Draconian. We want to share with intermediaries and clients the existence of these rules and to the extent clients have not done so already, to urge trustees to consider as a matter of urgency how the rules might affect them," wrote Steve Meiklejohn**.** If a trustee believes it may be administering a structure that is caught, it is incumbent on them to seek urgent French tax advice.

*On September 13 last year, the **French Supreme Court** delivered a key decision for syndicated financing by recognising, in the context of French insolvency proceedings, certain effects of the **trust** and the mechanism of parallel debt, which were both governed by the laws of New York State. In 2006 Belvedère issued a loan of $375m in the form of floating rate notes offered to the public and governed by the laws of New York State. The contract appointed the Bank of New York Mellon as trustee, principal paying agent, account holder and transfer agent. In such capacity, the trustee held the debt loan for the benefit of bondholders in whose name it had authority to make certain decisions. In addition, Natixis and Raiffeisen Bank Polska, the French and Polish subsidiaries of the issuing company that granted security interests to secure the repayment of these bonds, were appointed principal and secondary agents under a security interest-sharing agreement (also subject to New York State law). For these purposes the banks were recognised as creditors of the bond issue, along with the debt holders of notes. The parallel debt intended to allow security agents to conclude, manage and enforce security interests in their name but in the interests of the holders and their guarantors. This mechanism was created to: overcome the lack of effect of the trust, as France has not ratified the Hague Convention on the law applicable to trusts and on their recognition; and prevent the security agent from being considered as the agent, thus avoiding: the registration of security interests in the name of each bondholder; carrying out legal publicity for the enforceability of security interests as against third parties in the event of the transfer of bonds; and having to obtain a special mandate for claim registration or the enforcement of security interests. The courts consider a trust to be valid when it is set up under a law that recognises such institution. However, such validity does not result in the automatic recognition of a trust, and French case law has long held that international public policy reasons could prevent the recognition of trusts under French law.

EU attacks UK-Swiss tax deal

European Commission lawyers have concluded that the 2009 UK/Swiss tax bilateral agreement, which is key to the Exchequer's attempts to maximise the tax take for UK Plc, is in breach of EU laws. The men in Brussels have threatened to take action against the UK unless ministers renegotiate the agreement with Switzerland. The deal seemed to have provided a cash-strapped UK Exchequer with an opportunity to secure unpaid tax from UK citizens who have undisclosed bank accounts in Switzerland, writes Jonathan Levy of RPC. The price, however, was that Swiss banks and their clients could maintain confidentiality. For past years, the banks would make a one-off payment to HMRC on behalf of their clients at an effective tax rate of 34 percent, although the actual tax rate is likely to be somewhat lower. For future years, the banks would deduct an amount annually from assets held by them, again on a no-names basis. The withholding tax rate will be 48 percent on interest income, 40 percent on dividend income and 27 percent on capital gains. In an interview with the Financial Times, the EU's Tax Commissioner, Algirdas Semeta said he was "*ready to defend this key principle*" if no progress is made. Mr Semeta concluded: "*If we are unable to sort out these problems then it is clear that as guardians of the treaty we will have to proceed with the instruments that are in our hands.*

The *casus belli* is that the deal agreed between Britain and Switzerland undermines the EU's attempts to force

Switzerland and other 'tax havens' to waive banking secrecy and sign up to the automatic exchange of information. The Commission is unhappy too that some details of the agreement, including the rates and application of withholding tax, may clash with the EU savings directive and other legislation. In an interview, Dave Hartnett, Permanent Secretary for UK Tax, warned the middle classes that some of them would "*end up in tears*" as HMRC prepared to take a hard line on foreign holdings. He said: "*I think our top priority right now is the work we are doing to end tax secrecy, particularly in tax havens*". Hartnett is a big supporter of the UK/Swiss agreement and would much prefer it to remain unchallenged. He said: "*I don't think it does let fraudsters off, because we weren't going to catch them anyway…we don't think banking secrecy will disappear in Switzerland over any time in the foreseeable future, certainly not in the next 10 years…so what we are doing is collecting back taxes from people who we couldn't identify, and at a time when our nation has a deficit it seemed like a very sensible thing to be doing.*"
Unfortunately, precedent may be against Hartnett. The EU Commission's threat to take the UK to the European Court of Justice is strikingly similar to the dispute between the EU and US airlines over air space treaties. In 2002 the ECJ ruled that airlines had to negotiate with the EU as a whole, rather than individual member states securing routes through European air space. The ruling destroyed several bilateral air agreements between US airlines and EU member states.

Public service delivery row
The imminent takeover of Hinchingbrooke Hospital in Cambridgeshire by **Circle** has alarmed health trade unions, who fear a second 'Southern Cross' (the health care homes operator which collapsed last year). UNISON's Christina McAnea claimed that Circle had the same funding set-up as Southern Cross, in which it leases buildings owned by other companies, rather than owning them. Circle, which lost £27m in 2010 and which floated on the stock market, is 50.1 percent owned by Circle Holdings and 49.9 percent owned by the Circle Partnership – the clinicians and other employees. It says it empowers staff through co-ownership and participation in managing operations. Circle is due to take over the hospital next month when almost £40m of debts fall due to be repaid.
The procurement process is set for a shake-up designed to bring new companies and organisations into delivery of public projects and services. The plans were unveiled as the government attempts to secure greater value for taxpayers and expand the economy**.** The **Cabinet Office** published details of £50bn of potential business in fields such as ICT and facilities management. By April, government departments will specify medium term construction and re-organisation plans for sectors including prisons, probation services and pharmaceuticals. The aim of the departmental data, which will be updated at least every six months and will include a "confidence rating" to indicate the likelihood of a project going ahead, was to give businesses certainty about the work on offer, which in turn would give them the confidence to invest in plant, machinery and staff, said the government. It promised to work with Whitehall to ensure that SMEs were able to bid for work "including where relevant encouraging or challenging prime contractors to do more, or breaking up large contracts". Francis Maude, minister for the Cabinet Office, has pledged to ensure that all but the most complex procurement processes will be completed within 120 days – compared to the average of 200 days now. Government procurement policy was shrouded in controversy last year when Germany's Siemens was named preferred bidder for a £3bn contract to build and maintain new rolling stock for the Thameslink service, pushing Derby-based train manufacturer Bombardier into second place. Ministers indicated that EU laws prevented them from giving preference to British firms. Mr Maude, who is pressing for a simplification of the relevant EU directives, told the FT he believed he was pushing at "an open door" in pressing for change in Europe. He added: "We currently get the worst of both worlds. We pay more than we need to because we don't engage with suppliers in a sensible, practical, commercial way. We also discriminate, effectively, against UK suppliers ... these changes will help to address both of these problems." There was a myth that public sector organisations that talked to potential suppliers would be contravening EU law, he said, whereas in fact it was "commercially very desirable" to do so. He hoped to increase the number of companies and other organisations – such as mutuals and social enterprises – that were prepared to bid for government work. At the moment it typically cost four times as much to bid for public sector contracts as those in the private sector and the process was so expensive and time-consuming that "a lot of potential suppliers simply lose the will to live," added Mr Maude. The Cabinet Office was also determined to improve the quality of commissioning within Whitehall departments, said Mr Maude. Many civil servants, he added, "haven't been encouraged to be entrepreneurial. As we move towards an approach to public services that is much more open, in which we expect to commission many more services from outside the public sector ... we need civil servants and officials more generally to move from being line managers in hierarchical, bureaucratic organisations to being commissioners and contract managers".

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