Vol 27 No 6 March 2014

it's our business

newspad of the Employee Share Ownership Centre

Industry will drown in regulation – Davos warning

The Centre is to set up a lobbying campaign aimed at reducing the ever-growing tide of regulation which is afflicting the employee share schemes industry.

The need for a campaign emerged in Davos, where delegates at the Centre's 15th global employee equity forum heard loud complaints from members about the pressing need to simplify and standardise the enormous amount of share scheme information and documentation required by regulators within the UK, the EU and from the US government.

Centre chairman **Malcolm Hurlston, CBE,** plans to contact the Organisation for Economic Co-operation & Development (OECD) to establish whether or not it can intervene in an attempt to rationalise the regulatory annual share schemes reporting demands.

Hostility toward the regulatory high tide was highest in Davos during the trustee panel debate.

"The Foreign Account Tax Compliance Act (FATCA**)** is being brought in by the US government to get at private wealth, but there is collateral damage too and EBTs are being caught," warned **Grant Barbour** of **Bedell Group**.

"There is too much reporting to do in the employee equity industry – it's a huge expense for all of us to make sure, for instance, what the correct level of tax is for scheme participants," said **Peter Mossop**, director of **Sanne Group.**

"The regulators' information requirements should be unified and we should lobby the UK government to help us," said **Jeremy Mindell**, director of **Primondell.** "Why not use the tax filing form as the basis for a limit in our regulatory obligations?" asked **Alan Judes** of **Strategic Remuneration**

Maintaining compliance in Centre member service provider companies is now a major operation requiring many hundreds of hours of staff time, as dozens of data banks have to be trawled meticulously in order to ensure that all is in order. Practitioners are dismayed at the size of the fines that can be meted out for being in breach of compliance rules – however trivial the omissions or errors may be.

Mr Hurlston said: "The current blitz of regulatory demands confronting the share schemes world is just one example of the kind of OTT regulatory regimes which many business sectors, especially financial services, now experience throughout the western world. While pay-back for the crisis of 2007-8 is understandable, what we are now seeing has gone way beyond what is required for safe and secure share scheme operation. The expense required to remain compliant is so great that smaller service providers could be put out of business, so we must find a way of rationalising this process."

The global forum again took place in the five-star Steigenberger Belvedere Hotel and many delegates were upgraded into junior suite rooms.

The chairman used his opening address to remind delegates of the Centre's achievements during the past year – helping to secure a doubling in the SAYE-Sharesave employees' tax-protected investment limit; helping to keep the posties' CWU union onside during the Royal Mail privatisation; campaigning for the retention of employee share schemes in companies that have been taken over and putting pressure on companies to 'talk up' in the corporate responsibility sections of their annual reports the beneficial effects of having Eso schemes.

Furthermore, the Centre was arranging quarterly publication of a new Esop index (the FTSE calculated Employee Ownership Index, to give it the full name) devised by Capital Strategies with the help of FTSE and the London Stock Exchange. By focusing on the new three percent threshold for employee ownership within public companies, it would become clear whether Eso plans really did make a difference in the share price performance of companies which used them, as opposed to share price movements of those which did not, said Mr Hurlston.

From the Chairman

It beats me how people can get bonuses for losing more money. Such is the topsy-turvy world of banking. The bankers whose plight concerns me are those who loyally bought into sharesave, were ill advised by employers and lost heavily in the crash. Can they be compensated, perhaps in the reprivatisation? More importantly, have we learned the lesson and set limits for how good employee shareholding can be?

Malcolm Hurlston CBE

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

Alan Judes of **Strategic Remuneration** questioned whether the impact of new share options disclosure regulations on executive reward was properly understood by the government's Business, Innovation & Skills (BIS) department. In his presentation, Alan listed the daunting requirements on companies of the Directors' Disclosure Regulation (DDR). Directors' total pension entitlements had been dragged in, not to mention details of fees paid to remuneration consultants. A statement was required on the ceo's possible earnings in five years time, given good performance. Citing Long-Term Incentive Plans (LTIPs) as a case in point, "Instead of simplicity, we will get a multitude of numbers and the media will concentrate on the highest of these numbers. I predict we will get confusion," he said.

Fred Whittlesey of **Compensation Venture Group (US),** said that the present executive compensation model focused on short-term returns and institutional shareholders' design preferences, but failed to incentivise value creation for all stakeholders. "A lot of venture capital is now going to companies not just interested in making a profit, but a social gain too," said Fred. "Some companies are saying: 'Giving more to employees means less for others' – but this is a very disturbing view. The trend in the US now is to give equity to fewer employees – for example some no longer award equity to employees below mid-management level. Companies are increasingly voting against the renewal of employee stock grants," he added. "From all sides I see more pressure on equity compensation."

Total Shareholder Return (TSR) was the most used performance measure in the US today, but as Unilever ceo Paul Polman had said: *'I don't think our fiduciary duty is to put shareholders first. I say the opposite. What we firmly believe is that if we focus our company on improving the lives of world citizens and come up with genuine sustainable solutions, we are more in synch with consumers and society and ultimately this will result in good shareholder returns.'*

Seattle based Mr Whittlesey said: "We might not want to align employee interests with those of shareholders if the latter are not thinking socially." US compensation committees were heading for trouble on TSR, but alternatives like Earnings Per Share (EPS) were not much better. "EPS is among the most easily manipulated performance measure there is," said Fred.

Harvey Katz of **Fox Rothschild LLP**, New York, told delegates that tax implications were the main drivers behind US equity incentive compensation plans. In the US, equity incentive plans were taxed at Capital Gains Tax rates, which were only half ordinary income tax rates. Stock option incentives under the 422IR code created "huge" tax liabilities and had fallen into disfavour in the corporate world, said Harvey.

Nathan Best of **Western Union Business Solutions** and **Euan Fergusson** of **White & Case** tackled the challenges in making cross-border payments to overseas employees. Foreign exchange controls, such as the 'SAFE' filing process in China, could present reward plan sponsoring employers with heavy and expensive administrative burdens, said Euan. That could be got round by issuing phantom shares, which produced cash awards, or registration of the plan with the local tax bureau, even if that meant translating plan documents into Mandarin. There were new employer reporting requirements in Japan of income gained by resident employees from foreign equity awards and in the US on the sale of restricted shares and sometimes on the receipt of dividends by nominees.

Nathan explained that Western Union helped share registration and share plan providers through its network of 520,000 agent locations in more than 200 countries and territories worldwide. Making cross-border business payments – sometimes 4,000 in a single day - was its core business. Its ability to hedge against currency fluctuations was important. Western Union was working with companies to provide overseas employees with pre-paid plastic cards, onto which payments could be loaded.

Jeremy Mindell of **Primondell** asked whether the new FRS102 accounting standard would be a further blow to employee share schemes. He explained that FRS102 was supposed to modernise and simplify financial reporting for unlisted companies and subsidiaries of listed companies, as well as charities. At least the 3,500 pages of the previous standard had been reduced to 350, but there was less guidance than before. Adoption was compulsory by January 1 next year, said Jeremy. As to the longer-term significance of FRS102, he reminded delegates of China's former leader Chou-en-Lai who when asked what had been the consequences of the French Revolution had replied: "It's too early to tell."

When Corporation Tax would be levied for the first time under the new regime in October 2016, the company would have to ask itself: 'How much money does our Esop take away from this company's overall profit?' The valuation of share schemes and of employee shares presented serious problems: many companies used the Black-Scholes valuation methodology, but whichever they chose, when share prices rose, so did the accounting cost. The 'fair value' of share and option awards would appear in the P & L account. Investors would start looking at the fact that holiday pay would have to be accounted for up front, so rolling up holiday entitlement year after year might start to disappear on a 'use it, or lose it' basis, said Jeremy. Pension deficits too would become a greater and greater issue. It would be more and more difficult to hide Eso plans from the P & L account and there would be more pressure to outsource some share scheme work, not least because it had become difficult to account correctly for Eso plans, added Mr Mindell.

Martyn Drake and **Martin Sheridan** of **Computershare** discussed the emergence of global employee share purchase plans (ESPPs), which were popular with employers because they promoted corporate identity, fostered positive employee behaviour, aided recruitment and encouraged employee share ownership, they said. ESPPs were especially useful to predator companies which preferred not to integrate the disparate brands they had acquired. The increasing reliance upon mobile workforces - which demanded uniform benefits as part of expat employee packages - was another factor in their popularity, said Martyn. These global ESPPs generally enjoyed a superior take-up rate, a one size fits all nature, streamlined admin costs and the ability to provide equivalent benefits across multiple jurisdictions. In such plans, the offer to match employee share purchases, instead of discounting the original offer, became a very powerful retention tool if the forfeiture risk of losing the matching shares – e.g. early leavers – were written into employee contracts, they said. Country requirements for permitting ESPPs might include: local approvals and licences, local filings, financial intermediaries – as in Italy – translators and so on. Martyn warned delegates: "Share plan administration is moving into a regulated landscape which is getting more complicated by the day. In order to have a truly global footprint, you have to have the underlying infrastructure to support that."

Plan issuers were increasingly looking to their administrators to help individual employees with their Capital Gains Tax obligations and so on," he added.

David Pett of **Pett, Franklin & Co. LLP**, summed up some new employee share incentives in the UK by using the old maxim: "What the right hand giveth, the left hand taketh away." By holding a straw poll of delegates, he established that Chancellor George Osborne's Employee Shareholder Status scheme, dubbed *Shares For Rights*, had – against the odds – attracted some takers. At least four of the service providers present said they had executed at least one such contract for clients. Delegate Rob Collard of Macfarlanes said his department had done two contracts so far and had another three or four waiting in the wings. The scheme had been widely criticised and had been amended in the House of Lords, said David. Delegate Nigel Mills of MM & K said that HMRC had recently increased its valuation staff for *Shares For Rights* and so were desperate to receive valuation queries. In addition, David looked at the mounting pile-up of employees' trusts: there was the government's Business, Innovation & Skills (BIS) model documentation trust, on which David himself had worked mightily: plans for a 'safe harbour' trust – as promoted by the Office of Tax Simplification – and now an 'Employee Ownership Trust', which would have to own more than 50 percent of the company and which would offer CGT relief on sales by an individual, trust or partnership. However, Employee Ownership Trusts had been hedged with so many obstacles that they were … "Of no attraction to man or beast." David lifted the curtain on Whitehall internal communications: "We spent a lot of time preparing model trusts that were completely ignored by the Treasury. It was clear that the two departments were not talking to each other," he said.

Another issue being examined by BIS was whether an employee trust should be permitted to exist forever. The problem existed because historically great landowners and industrialists had to be stopped from entailing (tying up) trust assets forever.

David said that there was a "strong case" for Government to allow securities to be sold back to company at any time, which would allow smaller companies to operate Eso plans without having to set up a trust.

Kevin Lim of **Solium Capital UK** and **Mike Pewton** of **GlobalSharePlans** gave delegates an update on the dreaded US Foreign Account Tax Compliance Act (FATCA). Although there had been a huge outcry over FATCA, when first proposed, it had been accepted recently by a range of countries including the UK, the Channel Islands, France, Italy, Japan and Spain. "The world seems to be saying that it wasn't a such bad idea to catch people holding substantial assets outside their country and not reporting them," said Kevin. Such individuals were now challenged: they were asking themselves 'What do I do if I am given work outside the UK or France.' Mike added: "This legislation is going to catch a lot of our colleagues unawares. In three years time, more than 60 countries will have adopted FATCA – it's creeping legislation." Administrators would face "quite extensive reporting requirements."

Offshore trusts faced prying eyes across the board as never before. France now demanded an annual trust declaration every year and, under FATCA, all foreign bank or brokerage accounts had to be reported to the tax authorities. In Italy exchange controls and tax monitoring had been tightened. In Spain, tax residents were now required to report rights and assets held overseas if the joint value of each asset type was at least €50,000 on December 31. "All this is being rushed through Europe and inevitably some of the new regulations are a bit clumsy," said Mike. In Japan, employers were now obliged to report all employee equity awards and vestings from the previous year. Regulations were being introduced at a rapid pace, but were not necessarily being widely publicised. The result was that not all affected individuals were aware of what they were supposed to report. In some cases, you were safe if after vesting of your employee shares overseas you sold the shares and brought the cash home, but if you left shares in the Eso plan, you could get caught, added Mike.

They said that the Centre should lobby the OECD or other appropriate organisations so that a consistent exchange of views could be initiated for a potential uniform system of required filing information to emerge on a worldwide basis.

During the **Trustee Panel** session, which was chaired by **Peter Mossop** of **Sanne Group,** delegates heard that some large multinational companies were no longer bothering to issue share awards to employees in 'difficult' countries. "This unwelcome development is the result of the big push on global compliance," said Peter. "There is massive duplication of effort to stay compliant. It consumes a significant proportion of our working days."

Alasdair Friend and **Narendra Acharya** of **Baker & McKenzie LLP** delivered a comprehensive round-up of recent employee equity plan developments worldwide. Australia had become a "horror story" for equity plan sponsors, though it had not been that way a few years back. “They decided to tax stock options, some even at grant and consequently a lot of companies in Oz no longer think that the Eso game is worth the candle,” said Alasdair. A draft of a revised policy on the treatment of employee share schemes had been released last November. “We are hoping for more reasonable tax rules to apply,” he added.

A definitive ruling had been long awaited from the European Commission on which non-EU regulated exchanges would be judged ‘equivalent’ to EU exchanges as defined by the EU Prospectus Directive, but the decision making process had stalled and in all likelihood no ruling would finally emerge until 2015, much to the annoyance of US companies and others, said Alasdair.

Reporting obligations of individual employee equity participants were the ‘hot topic’ of the current financial year, not least because penalties for non-compliance could exceed the benefit of participating in share plans, said Narendra. Baker & McKenzie has been putting in about 100 new equity plans for US companies in China, he said. Chinese officials had wanted translations of everything and bureaucracy had held up the transmission of equity reward to Chinese employees. Another example of this was the news that companies which had previously obtained SAFE approval to operate employee equity plans in China are now required to obtain a new monitoring code and a business registration certificate, added Narendra, who works in B & M’s Chicago office.

Martin Osborne-Shaw of **Equiniti Premier Services** discussed how the Eso industry might help improve take-up levels in employee share schemes. More financial education for employees was clearly a good thing, but not enough, delegates argued during what became an open session. The structure of the main tax-approved employee share plans had not changed much and communication methods had improved markedly in recent years said Martin. Supermarkets had been particularly good at communicating their share schemes to employees. The problem was that most plans required a financial commitment, yet utility bills had risen 37 percent in just three years and more than 20m Brits were worried about their personal debt levels, so they didn’t have the cash to participate. Furthermore, there were awkward questions for the industry: was it right to encourage employees to put all their eggs in one basket – increasing their risk exposure – by investing their limited cash in their company plan he asked. Centre chairman **Malcolm Hurlston CBE** pointed out however that the Company Share Option Plan (CSOP) was ideal for companies to use if they had a low-paid workforce because using the CSOP required no money on the table from employees. The success of the Royal Mail employee share scheme was at least partly down to the heavy advance media coverage, said Malcolm. Not only had 150,000 postal employees accepted their free shares, but at least 15,000 of them had opted to ***buy*** more RM shares for themselves. **Stuart Bailey** of **Accurate Equity** said that ways could be found to raise the financial skills level of employees for them to invest in the right Eso plans. Employers had put in a lot of effort to bed in the statutory employee pension enrolment scheme, but share schemes were not being sufficiently integrated into the whole package of employee benefits.

Some companies faced the danger of complacency about Eso, said Martin. The personal touch, such as local champions, had often delivered the best take-up results and if the previous scheme had been successful, that in itself helped sell the new one, but employee share schemes could be “a bit of a poor relation” in the spectrum of employee benefits, he added.

Mike Landon of **MM & K,** assisted by **Andy Cooper** of **RBC Wealth Management**, examined how cash-strapped companies could use hedging mechanisms to deliver share option and share awards to employees. Companies needed cash in order to deliver the shares, but if they issued new shares at vesting time, they could run into ‘headroom’ problems (the maximum number of new shares permitted in relation to existing total equity, which affects dilution). Issuing share options carried uncertainties: whether performance conditions would be met or not, the exercise of options for ‘good’ early leavers, worries about NICs costs and so on. Using an EBT made it easier to deliver the whole value of awards to employees without payment, but there was a risk of a fall in the share price and cash and capital were being tied up in the trust. Andy explained that hedging solutions were now widely used for wealth management investors. Key examples were Call Options, Collars – buying or long calls combined with selling or short puts – and Mini-Futures. Whilst hedging instruments were not really suitable for AIM listed companies, they could be a much more cost effective way for large companies to gear up for equity awards and their vesting schedules, said Mike and Andy.

Mike Pewton of **GlobalSharePlans** talked about the problems facing many companies who had dozens if not hundreds of highly mobile employees. It was not unusual for companies not to have full records of the working mobility of their employees, but that could be dangerous now that countries worldwide were looking for extra revenue. An E & Y study in the US established that 64 percent of surveyed had incurred financial penalties for non-compliance. Such companies needed to gather large amounts of data on mobile employees and withhold the appropriate tax, said Mike. One Swiss company he knew of sent out Excel spreadsheets to mobile employees every month asking them to fill in exactly where they were on each day since the last survey. Yes, mobility records could be created on mobile phones, but there were privacy issues. More and more companies were being caught by the reporting demands and tax withholding rules as more and more countries “caught on” to the lucrative business of taxing mobile employees, added Mike. Mike is contributing an extra lesson to the Esop Certificate - the course starts on March 3.

Stefan Bort of **Prudential Assurance** entertained delegates by discussing whether or not share scheme sponsor companies were well served by practitioners. During his career with various employers, he had noticed that responsibility for employee share plans fell mostly on the company secretariat, who didn't really push them hard because Eso didn't seem to be "terribly exciting." Typically, HR, the company secretariat and the finance department all thought they had some locus in company employee share schemes, but often the question of ultimate responsibility was unresolved. Company lawyers and accountants frequently raised issues about the cost of employee share schemes – could the company really afford them? – said Stefan. "How interested are companies in all-employee share schemes? I feel our industry is going through a period of stagnation." He voiced the sentiment that some service providers were offering "jam tomorrow" with respect to modernising the administration and operation of employee share schemes. Stefan said he wanted to encourage staff to understand the whole cycle of share plan investment, but large companies tended to be too "ad hoc."

Sharesave maturity bonanza at Whitbread

Employees who invested the current maximum tax-approved £250 per month in Whitbread's recently vested five year SAYE are collecting gains of more than £60,000. In all, 1,050 employees working for Whitbread - owners of Premier Inn, Costa, Beefeater and Brewers Fayre - are celebrating a collective profit of more than £6m. Sharing in Whitbread's success, employees who saved in the five-year scheme stand to quadruple their original investment, while those with the three-year option will more than double theirs. The option price for employees in the three-year scheme is set at £14.14 and for those in the five-year scheme it is £7.28. With the share price trading at £37.50 on February 3 2014 (the maturity date), those participants saving the maximum of £250 per month stand to gain around £69,000 on the five-year scheme and around £15,000 profit on the three-year scheme.

There were 895 participants in the three-year scheme saving an average of £51 per month and each enjoying on average more than £3,000 profit. There were 160 people in the five-year scheme, with average monthly savings of £77 equating to profit in excess of £21,000 each.

Chris Thompson, store manager at a Costa coffee store in Chester, has been saving the maximum £250 per month in the five year scheme. He said: "This is potentially a life- changing sum of money for me. I'm not planning to sell all the shares straight away as I want to benefit from the dividend and any further increases in the share price, but I plan to sell some to help pay for a family trip to New Zealand. I'm so excited. I've downloaded a share monitor app to my phone so I can check my shares everyday. I've been telling my team to join the scheme, even if it's only ten pounds a month as it's a win win!"

Andy Harrison, Whitbread ceo said: "I'm really delighted for those Whitbread team members who stand to make a significant profit on the back of a sharp rise in our share price over the past few years. Our team members work tremendously hard delivering everyday outstanding service to our millions of customers and it's great that they can personally share in the company's success in this way."

Esop compensation for Irish gas employees

Another Irish state-sponsored Esop will be wound up shortly, resulting in big pay-offs for its employees. This time around, the company is **Bord Gáis**, which is being broken up to allow for the sale of the energy business to Centrica for €1.12 bn. The Esop's 3.27 percent stake will have to be dealt with before Centrica takes ownership so the state-owned company will buy the stake from the employees and distribute the funds. KPMG has already valued the business and the Esop is now awaiting clearance from the Revenue Commissioners on how the distributions can be effected in a tax-efficient way. The Esop's shares could be worth more than €70m and employee participants could gain staggered payments of up to €75,000 each, depending upon length of service and their level of Esop financial commitment. These payments could be stretched out over five years to make them as tax-efficient as possible. The Esop was set up in 2008 after three years of negotiations between the Government, the company and the unions. It was one of the final acts of Bertie Ahern's 11-year tenure as Taoiseach.

Bord Gáis and the unions argue that this shareholding was given in return for €32m in productivity savings from employees between 2005 and 2009. The details of the productivity savings are vague at best, claimed *The Irish Times*. An analysis of Bord Gáis's annual reports showed that its employee numbers rose from 714 in 2005 to 1,006 in 2009. The payroll over the same period increased from €40.1m to €64.2m. The average cost to the company of each employee rose from €56,162 in 2005 to €63,817 in 2009. Bord Gáis's turnover between 2005 and 2009 rose by 57.5 per cent to €1.35bn, but during the same time period, its cost of sales rose by 65 percent, while its operating costs, excluding depreciation, increased by 69.5 percent. The company's headcount increased by 41 percent and each employee was paid, on average, 13.6 percent more over a period when costs increased at a faster rate than revenues. It's hard to detect the productivity savings from those statistics, added *The Irish Times.*

The company's 450 employees are being briefed regarding their full terms and entitlements in a series of staff consultations. A staff ballot will then be held, the results of which should be known shortly. Post-completion, Bord Gáis Energy is set to be split three ways, with Centrica taking over the main electricity/gas business; London-based firm Icon Infrastructure taking control of the Northern Ireland-based distribution and retail business; and Canadian company Brookfield Renewables taking the group's wind interests.

Ogier Fiduciary MBO

The **Ogier Group** announced that the partners of **Ogier Fiduciary Services** had agreed terms to complete a Management Buy-Out (MBO) of the Ogier Fiduciary Services business from Centre member Ogier Group.

The deal closed on February 1, with final completion being subject to the usual regulatory approvals. The MBO of Ogier Fiduciary Services is being backed by **Electra Partners**, an independent private equity fund manager with more than 25 years' experience of supporting businesses, including those in the financial services industry. On behalf of its major client, Electra Partners has agreed to invest £83m of equity in the £180m transaction. The deal will result in significant additional funding to ensure that Ogier Fiduciary Services is able to realise its ambitious growth plans, taking advantage of market opportunities as they arise. The investment will also ensure Ogier Fiduciary Services continues to provide the very highest levels of client service, supported by additional investment in key systems and infrastructure.

Tania Bearryman, global service line leader for the performance & reward management team, said: "The MBO of Ogier Fiduciary Services has come at exactly the right time for us in the employee incentives market. Our business has invested significantly in new systems to support our expansion into global share plan administration and global retirement, deferred bonus and savings plan administration and trusteeship. This renewed commitment to continued investment in system development and infrastructure is exactly what we have promised to our clients and will deliver through our enhanced ability to grow the business through investment opportunities."

Ogier Fiduciary Services will continue to be led by Paul Willing as ceo, supported by the current executive team. There will be no change to clients' existing relationship management teams. Although the Ogier Group will be splitting into two independent businesses, it is anticipated that Ogier Fiduciary Services and Ogier Legal will continue to benefit from a close relationship. They will continue to share premises and facilities, and Ogier Fiduciary Services will continue to use the Ogier brand for a period to help ensure a smooth transition.

Roadchef: Second EBT transaction is void

A long legal battle climaxed in the High Court when former **Roadchef** ceo and chairman **Tim Ingram Hill** found himself facing a multi-million pound bill after a judge ruled that a second EBT he had set up in the company in 1988 was illegal and void.

However, celebrations were muted among members of the Roadchef Employee Benefits Trustees Ltd (REBTL), not least because Mr Ingram Hill was granted leave to appeal against the ruling by Mr Justice Proudman. Assuming the judgement stands, a long haggle over exactly how much Mr Ingram Hill should pay to REBTL is inevitable.

The judge said that according to REBTL, the amount payable by the defendants in the case - were his judgement to be sustained - was around £30m plus compound interest, whereas the defendants claimed the amount was a maximum £13.5m with, possibly, interest added.

Former Roadchef owner Patrick Gee was instrumental in setting up what was the UK's first major Esop in his motorway service areas company. His intention was that staff who worked at RoadChef for three years would gain shares over the subsequent five years on the basis of 100 for each year of service. About 50 per cent of staff were expected to benefit initially. However, the employees' union, GMB, claimed that – as a result of a shares transfer into the second EBT - instead of getting up to £90,000 each from the eventual sale of Roadchef, the qualifying employees received much, much less - a minimum of only £2,300, in some cases.

The case concerned a transfer of shares in Roadchef plc, between two employee benefit trusts, EBT1 and EBT2, created in December 1986 and in July 1988, respectively. The claimant, REBTL, a subsidiary of Roadchef, was and is the corporate trustee of EBT1 and the defendants, including Mr Ingram Hill's wife and one other, are the trustees of EBT2. The claim concerned the circumstances in which the trustees of Roadchef EBT2 granted options over the shares to Mr Ingram Hill, who was from 1986 the md and from 1988 the chairman and ceo of Roadchef. Whilst EBT1 was a standard associated element to the Esop for the benefit of all Roadchef qualifying employees, EBT2 was a vehicle which provided share incentives to Roadchef's senior management, said the judge.

The Esop, comprising an initial 12.25 percent of Roadchef's equity being placed in employees' hands, had been set up with the help of Unity Trust Bank and GMB.

Mr Ingram Hill had later complained that the Esop in EBT1 was "too expensive" and that the company would be better off financially if some shares were transferred into a new trust – EBT2 – which duly occurred. Some of the company's executives did not know that Mr Ingram Hill had been granted options over most of the transferred shares, which they thought were being warehoused in EBT2 for the benefit of around 600 rank -and-file employee. The then general secretary of GMB in July 1999 had questioned the transfer and grant of the options to Ingram Hill.

The trustees claimed that he had benefited hugely from EBT2 which, they said, was void in law. He had exercised the awarded share options in EBT2 and sold these shares as part of the sale of Roadchef to Japanese bank Nikko Corp. in 1998 at the price of 131p per share, worth £139m in total, from which he had made around £75m, including the proceeds from the sale of shares from EBT2. By then, the employees' share of the business had dwindled from a peak of almost one third to just 4.4 percent.

The judge said that though Ingram Hill had displayed broadly a sympathetic character in the evidence he had given, he had been manipulative too. He had "made a killing" by the sale of the shares from what was effectively his own trust.

The judge said: "How could REBTL have made any decision on the best interests of EBT1's beneficiaries without considering the value of the shares given away or any other matter of financial viability? In truth the other directors of REBTL simply did what they were told by Mr Ingram Hill, believing they had no choice.

All the evidence points to improper pressure exerted by Mr Ingram Hill. He was the entrenched chairman of Roadchef, he had total control over EBT2 (from which he had ensured through amendment that he could benefit), he exerted actual pressure over the trustee of EBT1 and he was appointed a director of REBTL at the meeting of February 6 1995." The judge said that Ingram Hill had breached his fiduciary duty because: "He did not tell the other directors of REBTL that, as I have found, he intended to secure options over the shares once they had been transferred to the trustees of EBT2. On the contrary, he gave the impression that the shares would be held or warehoused by EBT2."

Major changes loom for share scheme registration and reporting

The Centre thanks member remuneration and share scheme adviser **MM & K** for the following commentary, published in its latest *Share Plans Update* on imminent changes to share scheme registration and reporting procedures:

Self-certification of SIP, SAYE and CSOP

From April 6 this year, the process for HMRC to give formal approval to new SIP, SAYE and CSOP plans is to be replaced with self-certification by the companies which establish the plans. Companies will need to send notices to HMRC with some basic information about their plan and containing a declaration that the requirements of the relevant legislation are met.

The notices will not need to be given in advance. Instead, the deadline is July 6 following the tax year in which the first award of shares is made under SIP or the first options are granted under SAYE or CSOP. In addition, companies must self-certify *existing* SIP, SAYE and CSOP plans, which have already been approved by HMRC before April 6 2014, by no later than **July 6 2015 otherwise they will lose their tax advantages**.

Amendments to key features of these formerly tax approved plans (and apparently to any part of SIP trust deeds) will need to be reported under the annual online filing process – see below. Companies must make a declaration to confirm that the requirements of the legislation for the relevant plan continue to be met. Adjustments made to SAYE and CSOP share options to take into account a variation in the company's share capital will no longer require HMRC approval, but will have to meet strict conditions.

HMRC enforcement of self-certification

HMRC will be able to investigate plans either within one year of the original deadline for their self-certification or at any time if they have reasonable grounds for believing the requirements of the legislation are not being met. If HMRC decides that the plan contains a fundamental error, it will lose its tax advantages and the company will have to pay a penalty of up to twice the amount of income tax and NICs which had not been paid. For less serious errors, companies will be able to continue to operate the plans with tax advantages; but they will have to correct the error within 90 days and pay a penalty of up to £5,000.

Registration of all tax-advantaged and unapproved plans

In future, all share plans will need to be registered with HMRC. This includes Enterprise Management Incentives (EMI) and unapproved plans. Each unapproved plan may need to be registered separately. Moreover, if a plan contains both 'approved' and 'unapproved' parts, these will need to be reported as separate plans. As mentioned above, existing 'approved' share plans can be self-certified as part of the registration process. The existing HMRC reference number will be replaced with a new number. Before registering, the company must already be registered with the PAYE Online service. The deadline for registration will be July 6 2015. However, HMRC will be encouraging companies to register their plans as early as possible.

Online reporting for all share plans

The last paper annual share plan returns (including Form 42 for unapproved share plans), for the tax year ending April 5 2014, must be submitted by July 6, this year. The forms can be found at:
www.hmrc.gov.uk/shareschemes/ann-app-schemes.htm
From the tax year ending April 5, 2015 onwards, the paper returns will be replaced with online reporting for all registered share plans. As at present, these will give details of share awards and option grants and other taxable events; though HMRC is reviewing the exact content. The deadline of July 6, following the end of the tax year, will remain. This deadline will apply too to 'nil returns', where there has been no activity during the tax year. Facilities will be made available for plan administrators and other agents to complete part of the online returns. This may include separate schedules in a format which HMRC will be specifying.

The legislation includes penalties if the deadline for online returns is not met. If a return is not received by July 6, there will be an automatic penalty of £100. Further automatic penalties of £300 are payable if the return is still outstanding after three months and six months. Daily penalties will apply after nine months. A more draconian penalty of up to £5,000 will be imposed if a return is on time but submitted in the wrong format!

EMI online reporting starts much earlier

The Form EMI 1, which reports details of grants of EMI options, must be submitted to HMRC within 92 days of the date of grant. With effect from April 6 2014, the deadline will remain the same but companies will be able to submit the information online. Online submission will become compulsory as soon as the Finance Bill receives Royal Assent (expected in July). Companies will no longer need to include a declaration signed by the employee (concerning the hours he/she works) with the option grant notice; but they must confirm that the individual has signed this written declaration.

HMRC announced that there will be a staggered start to the introduction of Real Time Information (**RTI**) penalties, said Centre member **Deloitte.** The new automatic in-year PAYE penalties for late filing and late payment and in-year interest (charged on tax and NICs paid late during the year) were due to start from

April 6 this year. HMRC has decided to stagger the start of the new in-year late filing and payment penalties to give employers more time to adapt to reporting in real time. The new timetable will be: April 2014 - in-year interest on any in-year payments not made by the due date; October 2014 - automatic in-year late filing penalties; April 2015 - automatic in-year late payment penalties. See http://deloi.tt/NCxG5b

On the move

Jeremy Glover is now partner and consultant at Reed Smith LLP. In addition, he is ceo at 6S Infinity Ltd.

Veronique Japp is now executive director at UBS Corporate Employee Financial Services.

Centre member **MM&K** has a new recruit: **JD Ghosh**, who specialises in the commercial design and tax structuring aspects of UK and European based private equity funds with a particular focus on management incentives. He has extensive experience of designing, structuring and implementing equity based incentive arrangements for fund managers and for management teams in investee companies. Prior to joining MM&K, JD worked in a Big Four accountancy practice for around five years and prior to that with an international law firm known for its expertise in private equity. Before being enrolled as a solicitor, JD qualified as a barrister. "I am sure JD will be a great addition to the MM&K team," said MM&K partner Nigel Mills.

Birmingham based **Unity Trust Bank,** Midcounties Co-operative, and The Phone Co-op have become the first businesses to be accredited by the new **Fair Tax Mark**, the world's first independent accreditation scheme to address the issue of responsible tax. The Mark, which has been developed by a team of tax justice campaigners and tax experts, is designed to show that a company is making a genuine effort to be open and transparent about its tax affairs and pays the right amount of corporation tax at the right time and in the right place. Recent polling from the **Institute for Business Ethics** has found that corporate tax avoidance is now the number one concern of the public when it comes to business conduct. Margaret Hodge MP, recent guest of honour at the Centre's high table and Chair of the House of Commons Public Accounts Committee, said: "I think this is a fantastic idea. The reaction to the revelations about the tax practices of big names like Starbucks, Amazon and Google shows that this is an issue the public really cares about. Given the choice, many people would prefer to give their custom to a responsible business that does the right thing and pays its fair share of tax. The Fair Tax Mark helps give them the power to make that choice."

BIS officials briefed on new Esop index

Senior Whitehall officials have been briefed on the recent launch of the FTSE calculated Employee Share Ownership Index (ESOI) based on approximately 70 companies with a minimum of three percent employee share ownership. Centre chairman Malcolm Hurlston CBE told officials of the Business, Innovation & Skills (BIS) department that the Centre was disseminating and supporting the new Esop index (FTSE calculated Employee Ownership Index), which had been devised by Nigel Mason of Capital Strategies and the London Stock Exchange.

The Centre would next report on the quarterly results in early April, said Mr Hurlston. The Government is calling for additional research that would expand the business case for employee ownership. The Esop index presents an opportunity for a new investment fund made up of companies committed to employee share ownership, said BIS officials. Identification and drawing together of case studies from across the sector, including Royal Mail, would be particularly useful, they said.

BIS will aim to include employee ownership in a range of existing Government sponsored business-support programmes, such as Engage for Success. Updates will be provided at regular intervals. BIS will undertake a mapping exercise to summarise existing and planned research.

The Ham Review will look at public service mutuals.

HM Treasury had announced that draft legislation on reliefs for employee ownership – announced at Budget 2013 and the Autumn Statement – is currently under technical consultation. The new Finance Bill would be published later this month. HMT welcomed further contributions from stakeholders, whether in written submission or though discussion at meetings. The purpose of current deliberation was to ensure that the new legislation delivers what it was intended to deliver. The timeline for the new measures was that Capital Gains Tax relief will be effective from April 2014 and Income Tax relief from October 2014.

The Whitehall view is that legislation should not be used for tax avoidance. It is not the intention of the new legislation to drive firms into setting up new trusts, but to reflect existing practice and drive desired employee ownership behaviours. There were concerns around the current HMT definition of an EBT. BIS Model Documentation may provide an alternative definition. Model documents would be reviewed annually, as part of ongoing assessment of the EO resources, freely available, added BIS.

CONFERENCES

JERSEY: March 14 – Last chance to register

Only a few places remain available for the annual ESOP Centre / STEP Jersey employee share schemes conference for trustees. The extended half-day conference takes place on **Friday, March 14**, at the **Royal Yacht Hotel in Jersey**.

Our Channel Island seminars, held in association with local branches of the **Society of Trust & Estate Practitioners (STEP)**, provide an informative and relaxed environment in which to network and keep up with the latest developments in share schemes and employee benefit trusteeship. As part of this CPD accredited course, expert speakers will be sharing their knowledge and insights across a range of topics:

Jonathan Fletcher Rogers (Abbiss Cadres) –
The changing landscape of employee share ownership:

wrap-up of Coalition reforms and their impact moving forward
Stephen Woodhouse (Pett, Franklin & Co. LLP) –
EBT settlements with HMRC
Graham Muir (Nabarro) –
EBTs: new incentives and opportunities
Paul Malin (Haines Watts) –
EBTs: common pitfalls
David Craddock (DC Consultancy Services) -
Structuring Long Term Incentive Plans
Alison MacKrill (Carey Olsen) –
Legal update for trustees.
Panel Session - chaired by **Malcolm Hurlston CBE** and featuring **Rosemary Marr (Nedbank & STEP Jersey) + Helen Hatton (Sator Regulatory** and formerly deputy director general of **Jersey Financial Services Commission) -**
Jersey's present and future as a regulated jurisdiction in the new world of global tax transparency
The slot presentations from 0900 to 1300 will be followed by a delegates' lunch from 1.15pm.
Ticket prices are £295 per person for ESOP Centre or STEP members and £425 for non-members. For registrations and all queries, please contact Harry Atkinson as soon as possible.
email: hatkinson@esopcentre.com or
Tel: +44 (0)207 239 4971

NEW YORK: March 27

Register now for the Centre's first **New York** event on **Thursday March 27, 2014**. The seminar and working lunch take place on the Avenue of the Americas at the office of Centre member **Linklaters,** whose support has made the event possible. The rise in income inequality is a major stumbling block to world economic progress. Equity rewards are part of the problem but are they also part of the solution? The US and the UK are the world's engine economies for equity rewards – understanding best practices in these economies, with the help of our expert speakers, will make answers easier to find.
Keynote speaker **Antonio Falato**, capital markets economist in the **Federal Reserve Board's research and statistics division**, will lead the discussion with a talk on optimal ceo incentives. Papers will be circulated from **Dr Woody Brock** and others. Leading discutants include; **Alan Judes and James F Reda (James F Reda Associates)**, **William Franklin (Pett, Franklin & Co. LLP)** and **David Craddock (DC Consultancy Services) Fred Whittlesey (Compensation Venture Group)**, **Harvey Katz (Fox Rothschild)** and **Joe Saburn (Norris, McLaughlin & Marchus, P.A.)**. For a full provisional agenda see the Centre's website:
www.esopcentre.com/event/new-york-2014/
To register your interest in attending this event and for further details, please contact esop@esopcentre.com (tel: +44(0)20 7239 4971). It is planned to start a New York chapter of the Centre at this event so all members with transatlantic interests should aim to be represented.

ROME: June 5 & 6

A formidable programme is being assembled for the Centre's 26th annual employee equity plans conference, which takes place in central **ROME on Thursday June 5 and Friday June 6 2014.** This two-day event provides an ideal forum for: updates on the latest legal, regulatory and market trends in the employee equity industry; discussing share plan strategies; doing business; and networking. Confirmed speaker slot presentations to date are from: **Equiniti; Association of British Insurers; Employee Share Ownership Centre; European Trades Union Confederation; Human Resource Partnership; KPMG; Lewis Silkin LLP; Pearson Group; Pett, Franklin & Co. LLP, Strategic Remuneration** and **SunPower Corporation (US)**. Check on the Centre website at:
www.esopcentre.com/event/diary-date-rome-2014/
for updates on the Rome programme and speakers.
The Centre thanks lead Rome sponsor, **Equiniti**, which is helping to organise this event. *Equiniti provides award-winning executive, Sharesave & SIP plans and a wide variety of other employee benefits management services. It is the leading share plans administration provider for UK-listed companies and manages the second largest UK Flexible Benefits plan. Equiniti's clients vary in size, from 30 to more than 300,000 employees and span both FTSE 350 and overseas listed companies.*
The Centre offers a conference package for Rome, comprising:

- Entrance to all conference sessions
- Delegate pack with speech summaries
- Two nights accommodation (on single occupancy basis) on **June 4 & 5** in thefour-star plus **Residenza di Ripetta**, Via Ripetta, in central Rome.
- Breakfasts, lunches and refreshments during coffee breaks
- Invitation to the cocktail party (partners welcome)

The hotel, a converted 17th century convent, is part of the Royal Demeure Luxury Hotel Group and is in the heart of the city - a stone's throw from Spanish Steps, the Tiber and Via Corso. Its website is at:
www.royaldemeure.com
Registration secures you a room in the conference hotel, as the Centre books rooms at a group rate to make things easy for all. The delegate package prices for this conference are:
Centre member:
Practitioners **£1,135** Plan issuers **£645**
Non-member:
Practitioners **£1,750** Plan issuers **£765**
No VAT is charged on these fees
Speakers benefit from a significant conference package price reduction, subject to agreed topic content and slot availability. Practitioner **speakers**, who are Centre members, will pay **£995**; plan issuer member **speakers** will pay **£645**. **Apply for a speaking slot now.**
If you wish to attend as a delegate, please register now.
Small supplements are charged for two person room occupation and room upgrades.

You will also be able to extend your stay at the hotel at the Centre's discounted conference delegate prices (subject to supply and demand).
For further info, visit the event page on our website at: www.esopcentre.com/event/diary-date-rome-2014/
Your Rome contact is Fred Hackworth. Email: fhackworth@esopcentre.com with a copy to: esop@esopcentre.com

Squeeze on US equity retirement savings

US employers are squeezing their workers' retirement savings, holding back on both the amount and the timing of 401K matching funds and dragging out vesting schedules. Taken together, these measures are making it more difficult to save for old age.
Major companies that have engaged in such practices in recent years include **Whole Foods Market, Facebook, Oracle, Caesars Entertainment** and **JPMorgan Chase & Co.** The most frugal are scaling back company matches and setting lower limits for the maximum annual payment they make to a 401K account, according to hundreds of government filings analysed by ***Bloomberg***. A difference of three percentage points on a match can add up to hundreds of thousands of dollars lost for employees over the course of their careers.
"There's been an implicit contract for years and years -- workers save and companies match -- but now they're changing the rules," said Brigitte Madrian, a Harvard Kennedy School professor who studies retirement policy and corporate management. "Most individuals can't do it by themselves. We're going in the wrong direction."
Companies including **IBM** and **Hewlett-Packard** say their 401K policies are partially dictated by bottom-line considerations and marketplace competition. Others say that when setting their 401K contributions, they consider a wide range of benefits and their costs as well as employee preferences, including health care, vacation policy and incentives such as performance bonuses, stock options and outright grants: "In addition to our 401K plan, we offer benefits that our more than 80,000 Team Members have the opportunity to actually vote on, including paying only $0-$15 per paycheck for health insurance premiums, robust store discounts, and paid time off that carries over," Mark Ehrnstein, global vp at Whole Foods, said in an e-mail. "We offer other benefits such as a broad-based stock plan that awards 95 percent of options to non-executives, and we have a gain-sharing program that rewards teams for labor productivity."
The advent of 401K retirement savings since the late 1970s was supposed to help secure and boost the retirement savings of baby boomers. The plans, originally conceived as a supplement to pensions, have since mostly replaced them. Workers can direct up to **$17,500** of pretax income toward their 401K this year and an additional $5,500 for those aged 50 and older. The investment industry still says that 401Ks are a big improvement over pensions, giving employees more investment choice, more control over retirement planning and more portability amid the frequent job changes of the modern workforce. That, at least, was the promise held out by the industry that now holds $4 trillion in retirement assets. It hasn't worked out that way. The median balance in 401K and individual retirement accounts for households headed by people ages 55 to 64 who had accounts at work was just $120,000 in 2010, according to the Center for Retirement Research at Boston College. Those savings will provide only $4,800 a year, assuming seniors withdraw four percent annually, the amount recommended by retirement benefits experts to ensure retirees don't run out of money in their lifetimes. Financial planners say that retirees need savings of at least ten times their annual income to live comfortably.
Companies that adopted 401K plans have realised they can adjust them, tinkering with the plumbing and, in the process, costing employees millions in retirement savings. Contributions aren't mandatory as they generally are in traditional pensions. Since 401(k) contributions are measured as a percentage of payroll, the savings from any cuts are realised immediately. Some employers are changing what they offer to lower their own expenses and improve profits. That's what **AOL** tried when ceo Tim Armstrong announced the company would make 401K payments in one lump sum after the end of the year. When he blamed the change on spiraling health-care costs and the higher cost of benefits under President Barack Obama's Affordable Care Act, employees cried foul. Within days, Armstrong apologised and AOL reversed its decision. The tiff at AOL provides a window into a growing practice among companies of quietly scaling back retirement contributions, according to documents reviewed by *Bloomberg.* Many companies, including some major U.S. banks that sell investments to retirement plans, now delay their contributions to their employees' 401Ks until early the following year, paid in one lump sum rather than through regular payroll checks. Those changes depress employees' compounded returns. And employees at some companies who change jobs before the end of the year wind up leaving company matches on the table.
"It's starting to feel like déjà vu at the start of the Great Recession," said Marcia Wagner, president of the **Wagner Law Group**, who specialises in employee benefits. "Right now employers are looking at cost savings and they are definitely looking at their 401K plans." The corporate cutbacks are adding to employees' financial anxieties at a time when incomes are stagnant and even those earning low-six-figure incomes aren't accumulating enough retirement savings. A generation since the shift from company-funded pensions to mostly employee-funded 401K accounts, half of baby boomers aged 50 to 64 don't think they'll ever have enough to retire, according to a 2011 US survey.
The details of retirement plans vary widely from company to company. A typical match is three percent of pay and requires the employee to contribute six percent to get that company money. **Facebook** offered no company match in 2012 and 2013. **Whole Foods** provides an annual match of $152 based on a formula

of 15.2 percent on the first $1,000 that workers contribute. That compares to more generous companies, such as the biotechnology company **Amgen Inc.**, which contributes five percent of workers' salaries whether they contribute or not. The company will match as much as another five percent of employee salary deferrals. Facebook says it will decide each year at its discretion whether to make a contribution. The company plans to provide a match later this year "as part of a comprehensive set of benefits," said Facebook spokesman Tucker Bounds. Whole Foods' Ehrnstein said his company's match was approved by 84 percent of its 80,000 employees.

Kroger Co., the grocery store chain, is more generous than most. It matches 100 percent of the first three percent of workers' salary deferrals, plus 50 percent of the next two percent of workers' compensation. The company generally pays an additional contribution of one percent to two percent based on tenure. Kroger's 401K match programme is a way to attract and retain employees and is "a reflection of our company values," said spokesman Keith Dailey.

Most employees have no idea how their company's plan stacks up against competitors because the details are buried in opaque government filings. While companies file reports annually to the Labor Department that are available online, they're difficult to access and the information provided isn't consistent.

Corporate tinkering with 401K plans accelerated in the wake of the 2008 financial crisis. About 18 percent of 334 companies surveyed by consultant Towers Watson suspended or reduced contributions, a response to an urgent need to conserve cash. Yet when the liquidity crisis subsequently eased, about 23 percent of companies that reinstated company matches offered less generous contributions than before the recession.

Caesars Entertainment, the casino resorts and online gaming company, suspended its 401K match in 2009, when it was 50 percent of employee contributions up to six percent of pay, not exceeding the federal cap. When the company reinstated the match three months into 2012, the maximum contribution was $450 for that year, and it was $600 for all of 2013.

Hewlett-Packard lowered its match during the financial crisis from six percent to four percent, where it has stayed. "The change was made to align with comparative companies," said HP spokesman Michael Thacker.

A few percentage points up or down can make a huge difference come retirement day. A 25-year-old employee with a starting salary of $25,000 whose employer matched three percent would see his or her 401K balance reach about $624,000 if he or she saved consistently until age 65 and got six percent annual returns, according to calculations by the **Employee Benefit Research Institute**. That same employee would have $812,000 -- or 30 percent more -- if his or her company matched six percent, instead of three percent. The analysis assumes an annual wage growth of three percent so the employee's final salary at age 65 is $81,550.

"For employees in the ranks, what their company contributes to a 401K, can mean the difference between financial security and penury in old age," said Mike Alfred, ceo of BrightScope, a San Diego firm that ranks retirement plans. Some companies, especially small businesses, offer no match at all. The number of 401K plans that contribute declined three percent in 2012, according to a survey of government filings of more than 400,000 plans by American Investment Planners, a financial adviser in New York.

Companies save costs through lengthy vesting requirements, forcing employees who leave to forfeit unvested contributions. Employees at Oracle, for instance, are 25 percent vested after one year of employment, another 25 percent after a second year and only fully vested after four years. In 2012, Oracle used $1m in non-vested payments to offset its matching contribution obligations, according to government filings. An Oracle spokeswoman, Deborah Hellinger**,** declined to comment. Another form of skimping occurs when companies delay 401K matches until the end of the year or early the following year. IBM shifted last year to a lump-sum payment. Workers who left the company before Dec. 15 didn't get their match for the year. "Younger workers who tend to be more mobile are really going to get hammered by this," Harvard's Madrian said of delayed matches and long vesting schedules. While the amounts left on the table may only total a few thousand dollars, over the course of decades of compounding and investing, they have the potential to significantly enhance retirement portfolios, she said.

Top banks get round EU imposed bonus cap

A defiant HSBC is handing its chief executive, Stuart Gulliver, allowances worth £32,000 a week – on top of his £1.2m salary – to get around the EU's cap on bonuses, in a move that is expected to be replicated by the other high street banks, said *The Guardian.*

HSBC became the first UK bank to reveal how it will sidestep the pay restrictions imposed by Brussels, as it further fuelled the debate over City pay by also revealing that 239 of its bankers received more than £1m last year. Gulliver, the boss of Britain's biggest bank, hit out against the new rules, which restrict bonuses to 200 percent of salary even with shareholder approval, but the TUC accused HSBC of "soar away boardroom greed."

The £1.7m 'fixed pay allowance,' paid in shares every three months on top of Gulliver's salary, will ensure he is paid a minimum of £4.2m a year, up from £2.5m now. Similar allowances, in shares that cannot be sold for five years, are being handed to 111 top bankers at HSBC, while another 554 are to be handed extra payments in cash.

The move prompted Labour to call for a repeat of its bonus tax while the Robin Hood Tax campaign said the payments bolstered its argument for a tax on financial transactions. "HSBC haven't so much circumvented rules on bonuses as driven a coach and horses through them. The only way to rein in bankers' remuneration is to make banks pay their fair share to society," said Shadow Financial Secretary Cathy Jamieson.

The TUC general secretary, Frances O'Grady, said: "It would be great if banks put the same effort into lending to small businesses and investing in infrastructure as they do to getting round EU rules on boardroom bonuses."
HSBC's response to the Brussels bonus cap was contained in its annual report, which showed profits rose nine percent to $22.5bn (£13.6bn) in 2013, when its bonus pool for staff rose six percent to $3.9bn.
However, the rise in bonuses at HSBC was in contrast to Barclays, which increased them by ten percent even though its profits fell 32 percent. HSBC said its dividends to shareholders were up 11 percent while staff costs were down six percent. Barclays is among the banks – including the bailed-out Lloyds Banking Group and Royal Bank of Scotland – that are expected to follow HSBC by handing out allowances to top staff as they respond to the EU cap on bonuses, which affects payouts to be made this time next year.
The disclosures by HSBC came as the pay-setting committee of RBS prepared to meet to confirm the bonus pool for its 120,000 staff. The size of the pot, expected to be £500m, was being announced, when the 81 percent taxpayer-owned bank was expected to report losses of £8bn.
"We don't want to do this at all," said Gulliver, whose total pay and bonuses in 2013 were £8m, up from £6.3m the previous year. He stressed his maximum potential pay each year would fall to £11.4m from £13.8m to counteract the rise in the fixed part of his pay. Gulliver, who started his career at HSBC more than 30 years ago as a currency dealer, also receives £79,000 for the use of cars in Hong Kong and accommodation there worth £229,000.
George Osborne is taking legal action against the Brussels cap and Gulliver said the bank would revert to its previous schemes if this was successful.
"We had a compensation plan here that the shareholders liked but sadly because of the EU directive we've had to change. This isn't something we would have wanted to do … It's much more complicated," Gulliver said.
The Bank of England's Andrew Bailey has warned the cap could lead to a £500m rise in fixed salary costs at the big banks and make them riskier. Andrew Tyrie, the chairman of the Treasury select committee who also chaired the parliamentary commission on banking standards, said: "A crude bonus cap does nothing to incentivise higher standards. What we need is a fundamental reform of the bonus culture including much longer deferral and much greater scope for clawback, as the banking commission proposed."
HSBC – which after a £1.2bn fine in 2012 is subject to tough restrictions imposed by the US authorities – risked further controversy over pay by revealing that its chairman, Douglas Flint, who in the past has not received bonus payments, is in line for new share awards because of his role in "intense regulatory change". The move could allow Flint to receive maximum pay of £4.6m a year, up from £2.4m.
Goldman Sachs' top London staff are receiving large increases in basic pay this year, plus special 'role based' allowances, as the bank grapples with the European Union's bonus cap.
The role-based payment is understood to be similar in structure to a scheme set up by Barclays. The allowances are set at the beginning of the year, and paid to high-level staff in monthly instalments. The payments are *not* performance linked, but can be altered according to economic conditions and the bank's forecasts.
In 2013, Goldman splashed out $383,373 (£234,493) per employee on average as profits came in five percent ahead of the previous year at $11.7bn. Goldman staff were informed of their 2013 bonus levels in late January; though they were not told what their salaries for 2014 would be – a surprise to many and one that has created considerable rumblings at the bank. That is because the role-based payments have yet to be finalised.
The bonus cap limits payouts to 100 percent of salary, with an option of 200 percent if a 'super majority' of shareholders can be persuaded to agree. It has proved a headache for banks, which have been reluctant to scale down pay to people whom they adjudge to be top performers. Most European bankers affected by the cap work in London, and the UK is challenging it in the European Court of Justice. It argues that the measure limits the ability of banks to claw back rewards from staff who are responsible for harming their employers.
Critics of the cap claim that it reduces the flexibility of banks in terms of cutting variable pay when times get tough and they need to conserve capital. UK regulators and the Bank of England are also dissatisfied with the measure.
Goldman's overall compensation ratio – the amount of revenue set aside to pay staff, which is closely watched by shareholders – fell slightly to 36.9 per cent from 37.9 per cent the previous year. The average pay figures have to be viewed with a degree of caution because the staff number includes secretaries and support staff. Typically, a partner at the bank will receive at least $600,000 in base salary, but that figure will be dwarfed by bonus payments based on work done and revenues attributed to particular bankers or traders.

Bonus outcry at Barclays

Barclays risked stoking fires over bankers' bonuses by announcing a 13 percent increase in non salary awards to its investment division staff, despite a 37 percent fall in its profits. Overall, group staff netted a ten percent increase in bonuses and other incentives awarded to staff, to more than £60,000 per head on average, despite a fall in pre-tax profits of almost one third. BBC Business Editor Robert Peston wrote: "So what will prompt surprise and outrage is the disclosure that there was a 13 percent rise to £1.6bn in such performance rewards for Barclays' investment banking division despite its profits falling 37 percent."
Meantime, Barclays announced that a further 12,000 jobs will be axed worldwide this year…
Barclays ceo Antony Jenkins told Radio 4's *Today* programme why such rewards had risen: "We employ

people from Singapore to San Francisco, we compete in global markets for talent. And if we're acting in the best interests of our shareholders, we have to make sure we have the best people in the firm." The bank is increasingly concerned that it has become too easy for the giants of Wall Street to pick off its best people, by pointing to the looming imposition of the EU's cap on bonuses. Which is why Barclays is finding ways to get round the bonus cap and feels the need to publicly make it clear that it still offers substantial rewards for investment banking stars.

The bank said the size of its deferred bonus pool was much higher than required by its pay code and was expected to be among "the highest deferral levels globally". This year's bonuses awarded to mds in the investment bank were deferred 100 percent.

Commenting on Barclays' end of year results, TUC General Secretary Frances O'Grady said: "Most people will find it hard to understand why a bank which has seen a big drop in profits has decided to increase its bonus pool to a whopping £2.4bn. So while many at Barclays are celebrating their bonus bonanza, hard-pressed families still experiencing the financial pain of the recession - a recession caused in part by the reckless actions of the banks - will be struggling to make sense of it all."

Barclays pointed out that its top people would be receiving deferred bonuses, paid mainly in shares. "The prudent way to pay bankers is in shares, because paying them in cash depletes banks' vital, loss-absorbing capital," said Mr Peston. Paying them in shares actually increases banks' buffer against losses (since the shares are that buffer). Perhaps paying bankers in shares may encourage them to take fewer dangerous risks that could damage their respective banks, because if a bank were to go down, pop would go the value of the shares. However I say only maybe, because there is plenty of evidence of business folk ramping up the value of shares in a dangerous and short-term way, in a frantic attempt to sell the shares at the top. So share-based rewards are no guarantee of sensible behaviour. The point is that all banks have been handing out wodges more shares to their top people, rather than cash, under pressure to do so from regulators and politicians," he added. Barclays ceo **Antony Jenkins** will not collect his annual bonus for 2013 after the bank faced 'very significant costs' over a series of problems. Mr Jenkins, who took over after Bob Diamond resigned in the wake of the Libor rate-rigging scandal, said legacy and conduct issues had hit the bank hard last year - and so he would not accept his multi-million pound payout. Mr Jenkins would have been entitled to a payout of up to £2.75m, although he was not likely to have been offered this maximum amount, calculated as 250 per cent of his £1.1m salary. He declined his annual bonus last year too. Mr Jenkins is still in line for long-term incentives which will not have been affected by his bonus announcement.

Executive reward in state sector banks

The Lib Dem MP for Leeds North West, Greg Mulholland, has drafted an early day motion along with a group of his party's backbenchers amid calls for action to control executive pay in state-owned banks. The motion welcomed the measures introduced by **Business, Innovation and Skills** Secretary of State Vince Cable, which allow shareholders to determine executive pay and bonuses. Mr Mulholland said: "We now need to have clear and sensible limits for pay and bonuses in all state owned banks and a complete ban on any bonuses or pay rises for executives for state owned banks that have made a loss." The motion supports a cap on bonuses and an overall cap on executive remuneration to prevent salaries being increased to compensate for lower bonuses. It calls for a ban on bonus payments or increases in salaries for executives in banks wholly or partially-owned by the state during the period where the financial institution has recorded a loss.

Executive reward reform urged

Companies should keep the compensation structures for chief executives (ceos) and other senior directors as simple as possible by paying them a salary and a bonus "if appropriate, based on performance", **Martin Gilbert**, ceo of **Aberdeen Asset Management**, told City analysts. He emphasised that executive bonuses should be awarded primarily in shares deferred for several years, in order to align shareholders' interests with those of the management.

Mr Gilbert called for complex remuneration structures such as long-term incentive plans (LTIPs) to be scrapped altogether. His comments came ahead of what is likely to be renewed concern over executive pay as FTSE 100 companies finalise pay schemes ahead of a flurry of agms in the spring. This follows the furore over the level of executive compensation during 'Shareholder Spring' which claimed the scalps of the ceos of companies such as Aviva, Trinity Mirror and AstraZeneca as investors rebelled at the size of proposed large compensation packages, despite share price underperformance. Aberdeen, an emerging market specialist, is in the final stages of taking over Scottish Windows Investment Partnership (SWIP), the £136bn investor which is an active player in the UK stock market.

"Remuneration should be kept as simple as possible. Executives should receive a salary and a bonus if appropriate, based on performance," said Mr Gilbert. "This should be paid largely in shares over a number of years – thus aligning the interests of management with shareholders."

He believes that LTIPs – which companies use to reward executives who achieve a series of goals over time – "are far too complicated to be part of the mix". He said that remuneration reports in companies' annual reports had become "longer and longer," arguing that they too should be simplified. Mr Gilbert is one of the few FTSE 100 ceos without an LTIP. Aberdeen's most recent annual report shows he received a £5.1m remuneration package last year, including a £500,000 salary.

General Motors Co. ceo **Mary Barra**, may receive total compensation this year of $14.4m, which would be $10m more than the largest U.S. automaker previously disclosed. Barra, who became the first female ceo of a global carmaker on January 15, may receive $10m in long-term compensation as part of her package, the Detroit-based company said in a statement. That portion is subject to shareholder approval at GM's agm in June and the final amount depends on the company's performance, GM said. "The company released the full figures ahead of its proxy filing in April to correct misperceptions created by comparisons that used only a portion of Barra's overall compensation," GM added. The company had said earlier that Barra, 52, would earn $1.6m in salary and $2.8m as part of the company's short-term incentive plan. While the automaker said at the time that she was likely to receive additional compensation as part of the new long-term incentive plan, it was criticised as paying her a fraction of what her predecessor received. Barra, previously the automaker's top product officer, succeeded Dan Akerson who stepped down to take care of his sick wife. Akerson earned $11.1m in 2012. He remains at GM as a senior adviser and is eligible to receive a pay package worth as much as $4.68m this year.

Lloyds Banking Group could claw back £2.7m of bonuses from former executives after its bill for the payment protection insurance (PPI) scandal rocketed. Ex-ceo Eric Daniels is among those who may be denied a shares bonanza after the cost of the disaster reached almost £10bn at the taxpayer-supported bank. The *Mirror* understands up to 80 percent of a £1.45m bonus awarded to Daniels in shares in 2010 – but which was due to be paid in tranches – hasn't been given to him. It is thought Lloyds' remuneration committee, which decides senior executives' reward, will meet shortly to decide if he will get the remainder of the shares next month. Four other executives who were running the bank in 2010 have been denied up to 50 percent of their 2010 shares bonus, and could now be made to forego the rest. Ex fd Tim Tookey, who left in February 2012, has yet to get £617,000 worth of shares from 2010.

Helen Weir, who ran the retail bank until May 2011 and is now the fd at John Lewis, has £535,000 worth outstanding. Former investment banking chief Truett Tate is awaiting £688,000 in shares. And Archie Kane, the former head of Lloyds' insurance arm, is due shares worth roughly £500,000. Lloyds' remuneration committee hasn't yet decided if the five, plus eight other bankers, should forfeit the shares added *The Mirror.*

However, Lloyds' ceo **Antonio Horta-Osorio** could be awarded and would accept a bonus of up to £2m in the coming weeks, *Sky News* reported, citing Whitehall sources. Sky said that Lloyds and its biggest investor, UK Financial Investments (UKFI), were discussing the terms of the ceo's 2013 bonus, which would be linked to a long-awaited resumption of dividend payments or a further sale of taxpayer-owned shares. Lloyds, which last paid a dividend in 2008 before it was rescued during the financial crisis, is 33 percent UK taxpayer owned. The bank said that it expected to apply to the regulator in the second half of the year to restart dividend payments. Sources said the bonus would be awarded in shares and deferred for at least five years, the broadcaster reported on its website.

Martin Wheatley, CEO of the **Financial Conduct Authority**, told MPs at a Commons committee hearing that tougher guidelines on financial sector pay were under consideration. When asked if senior managers at Lloyds would have their bonuses clipped following the bank's record £28m fine in December, Wheatley said the "whole concept of claw back" was that people involved in bad decisions should suffer the consequences of their actions.

Private Equity reward bonanza

The directors' pay bill at private equity firm **Terra Firma** increased by 183 percent last year, according to accounts filed at Companies House. Terra Firma Capital Partners, whose investments include Odeon and UCI Cinemas and Four Seasons Health Care, posted a profit of almost £4.5m in the year ended March 2013 — up from £2.5m the previous year. The directors of the firm profited with their total pay bill increasing to £5.63m from £1.99m in 2012. The highest paid director — more than likely to be ceo Tim Pryce — was paid £2.7m in 2013. It can't be said for certain that Pryce was the recipient of a £750,000 payment as the highest paid director for the year before, but if he was, his pay has increased by 260 percent over the two years. Guy Hands, the man behind Terra Firma, benefited from a £3m dividend paid to a Cayman Island- registered company controlled by him. The dividend paid was down on the £3.5m paid the year before.

Meanwhile 'real' pay levels fall…

Real – i.e. price inflation-adjusted – wages in the UK have been falling for more than three and a half years, according to new research published by the Office for National Statistics (ONS). Real pay has been falling by an average 2.2 percent since the first quarter of 2010, said ONS. Whilst real wages grew by 2.9 per cent in the 1970s and 1980s, that trend slowed down to 1.5 per cent in the 1990s and to 1.2 per cent in the 2000s before grinding to a halt – followed by falls from the end of the last decade, its statistics showed.

TUC General Secretary Frances O'Grady said: "Over the last four years British workers have suffered an unprecedented real wage squeeze. Even more worryingly, average pay rises have got weaker in every decade since the 1980s, despite increases in productivity, growth and profits. Unless things change, the 2010s could be the first ever decade of falling wages. A return to business as usual may only bring modest pay growth. We need radical economic reform to give hard-working people the pay rises they deserve."

Final salary pensions to be cut back at John Lewis

The John Lewis Partnership (JLP) announced plans to chisel away at its final salary pension scheme to ensure that it remains both fair to employees ('partners') and affordable over the long term. Following extensive briefings and discussions with partners, a draft proposal has been presented to the Partnership Council, the group's central democratic body. The main elements are to adopt a defined benefit/defined contribution hybrid scheme as follows: *To continue to offer a defined benefit (DB) scheme but at a reduced accrual rate for future service *To reinvest savings from changes to the DB portion of the scheme to extend the contributory defined contribution (DC) from the first three years to a Partner's entire career *To increase the waiting period before joining the DB section of the scheme for new Partners from three years to five years *For future service, to link the pension scheme's normal retirement age to future increases in the state pension age and to limit pension increases in retirement to the CPI measure of inflation capped at 2.5 percent instead of RPI, for future service. The final wording is expected to be voted on by the Partnership Council towards the end of this year, in tandem with a period of statutory consultation. Nat Wakely, director, pensions benefit review and the author of the draft review, said: 'The JLP pension is a defining element of our business. We are determined that it should remain so while ensuring that the scheme is sustainable for the long term. The draft proposal maintains a non-contributory defined benefit pension but at a reduced accrual rate which then enables the contributory defined contribution pension to be extended throughout a partner's whole career. Unlike in other companies, employees and shareholders are ultimately one and the same in the partnership, so decisions on the pension benefit require the agreement of the Partnership Council, the Partnership Board and the chairman." The JLP reached agreement with the partnership's pension scheme trustee on the terms of the triennial valuation. As at March 31 2013 the valuation of the company's defined benefit pension scheme showed a deficit of £840m, which was in line with the accounting deficit already announced in March 2013. The deficit arose principally due to a reduction in interest rates used to discount the scheme's liabilities. JLP and the trustees have agreed a ten-year plan to eliminate this deficit, which includes cash contributions of £44m a year and in addition a one off payment in January 2014 of £85m. The balance of the deficit is expected to be met by investment returns on the scheme's assets.

SA mining Eso storms ahead

Mining company **Kumba Iron Ore**'s 6,209 worker shareholders, who became pre-tax half-millionaires in 2011, when the company paid out R2.7bn during the first phase of the ten-year Envision employee share ownership plan (Esop), can look forward to an interim dividend payout in March, while awaiting the second maturation point payout, which is due in November 2016. Employee shareholders at Kumba, 70 percent owned by mining major Anglo American, each received R576 045 for their holding of 3,365 units in Kumba's Envision Esop, which equated to an after-tax payout of R345,627. In addition to the initial payout, which came on the back of good production and share prices in 2011, the worker shareholders have received interim payout dividends exceeding R100,000.

Established in 2006 as part of Kumba's broad-based black economic empowerment initiative, Envision was designed to promote economic empowerment among historically disadvantaged permanent employees below managerial level through an increase in broad and effective participation in the equity of the Sishen Iron Ore Company (SIOC) by workers, who contribute daily to meet production targets, explains Kumba capital projects manager Zelda Nel, who helped bring the Envision Esop to fruition and was the project leader during its implementation.

Envision is only one part of Kumba's three-part empowerment programme, with the second being the SIOC Development Trust, which targets community growth and poverty alleviation through investment in and support of local projects for health, education and enterprise development. The trust's work also ties in with Kumba's own statutory social and labour plans and the company's partnership with the JSE-listed Exxaro, which is also working to deliver real empowerment, particularly in skills development and equity participation.

The success of the Envision Esop depends on the share price at the time of the maturation point and successful company performance, as well as several external influencing factors, says Kumba corporate communications manager Gert Schoeman. "I can confidently state that Kumba is doing well and that the company will continue to do well in the future. If dividends continue to flow and the share price continues to rise, the share-holding employees stand to benefit at the next maturation point," he says. National Union of Mineworkers (NUM) spokesperson Livhuwani Mammburu says the union is pleased with the way in which the Envision Esop has benefited its members and would like the Esop to be an example for other mining companies to follow. "The Esop payout at Kumba made a difference in the lives of the workers and we are, therefore, placing pressure on all mining companies in South Africa to follow the same route and share their wealth with their employees."

Meanwhile, trade union Solidarity, which previously described Envision as "the most successful Esop in South Africa's history", continues to regard the Esop at Kumba in a positive light, says Solidarity spokesperson Gideon du Plessis. "It is currently on the same growth trajectory as it was three years ago and we expect that employee shareholders will receive another substantial payout in 2016. We are also pleased with the yearly dividend payouts."

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