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it's our business

newspad of the Employee Share Ownership Centre

Plans need push, chairman tells delegates

How employee shareholders retain and move their shares over the years is an issue which has moved high up on the Centre's agenda, chairman Malcolm Hurlston told more than 60 delegates at the Centre's 17th global employee equity forum, held at **White & Case** in the City of London.

"We want to develop and build on the links between employee share plans and long-term saving arrangements," said the chairman in his opening address to the Davos-in-London event. This key theme was taken up by Francis O'Mahony, head of Eso and share registration at Centre member **BT**, who was assisted in delivering a major international share plans case study by Bob Birkhead of **Equiniti**.

Mr Hurlston said that the recent fall in stock market prices worldwide presented a good opportunity for companies to introduce new broad-based employee equity plans, whether share option based or share purchases, as in the Share Incentive Plan (SIP). The prospect was of substantial gains in three or five years' time, which was precisely what had happened at BT after the financial crisis of 2007-8.

The chairman had recently met Business Secretary Sajid Javid, whom he described as the leading advocate of all-employee share ownership within the government. Mr Javid had personally ensured that almost 150,000 postal employees received a further one percent of Royal Mail's equity, giving them collectively a more than 12 percent stake in the company via the UK's largest employee share ownership scheme – a five-year SIP.

The rise in the National Minimum Wage from April announced by George Osborne would put at risk thousands of jobs in hospitality and retailing. How much better it would be if the government did more to encourage companies to offer employees participation in broad-based Eso plans, particularly the Company Share Option Plan, which requires no up-front cash contributions from lower paid employees such as supermarket check-out staff, he added.

The chairman reported growing media interest in the quarterly Esop index, which the Centre had helped establish. The FTSE-calculated Employee Ownership Index tracked the relative success or failure of companies with considerable employee ownership via-a-vis companies which did not bother with broad-based share plans. The index had shown massive outperformance by esop companies compared with the market as a whole. "We define the 'good guys' as those companies in which more than three percent of the equity is owned by employees other than directors, he explained, adding that the next step could be the launch of an Esop investor fund.

The Centre is an active member of the business advisory group of the OECD, the chairman told the international event and the Centre valued the support from member firms **Capita** and **Linklaters.**

The highlight of the Centre's year had been the International Awards Reception & Dinner, held at the Reform Club in Pall Mall. The main award winners were: **Amadeus IT Holding**, **Abzena**, **Royal Dutch Shell**, **Telefonica** and **Henderson Global Investors**. Mr Hurlston asked all present to start thinking about plans which could be good candidates for the Centre's 2016 Awards.

Telefonica's use of video as a key means of communicating its new worldwide employee stock purchase plan, had been "outstanding," said Mr

From the Chairman

The outstanding success of London Davos, the Centre's best attended conference for some time, has led to plans to step-up the conference programme.

Certainly it is time to put London back on the list of our major conference venues: I am now planning a British Isles event for November. In these days of FATCA and the Common Reporting System it is nonsensical that negative attitudes prevail between the mainland and the crown dependencies. If there is a gap, we shall bridge it. Similarly with the new growth of the new Employee Ownership Trust we shall step-up our offer of events to the smaller business sector, beyond the regular seminar we hold with the Institute of Directors. Watch this space.

Our World Centre events are up for review after Vienna. Our footprint should fall where members wish to tread.

Malcolm Hurlston CBE

Hurlston. With support from his chief executive, **Miguel Benzal** from Telefonica was invited to show delegates the three-minute video which featured the world class tennis player Rafael Nadal, in the company of the Telefonica chairman.

Miguel explained that international employee equity plans were important to Telefonica because they offered "corporate glue" to hold together employees who had worked for many different companies before being acquired by Telefonica. "Share plans unify us," he told delegates. The plan featuring Nadal in the video had been offered to more than 100,000 employees in 22 countries, with 14 different currencies involved. The image of Nadal had special resonance throughout Latin America. The overall participant take-up rate had risen from 21 percent for the previous plan to 35 percent this time – a significant increase. Videos and websites had been important to Telefonica as a means of communication, as were all the social media.

Stuart James of remuneration specialists **MM & K** tested the value of clichés such as Eso marching hand -in-hand with successful UK corporate growth. Was there a shared global vision? But was that really the case? In the delegate debate which followed, the chairman pointed out that the general decline in all-employee UK share schemes was being masked by the huge success of the tax-approved Enterprise Management Incentive (EMI), which around 10,000 qualifying smaller companies had used to incentivise key staff. Delegate Mike Kemsley of **Indigo Planning** said that the presence of esops in a company was a recognised signal of good and committed management. Jeremy Mindell of **Primondell** noted that it was important for workforce morale to give *all* employees a share in the company, but John Hunter of the **UK Shareholders Association** said the jury would always be out on the issue. David Craddock, of **DC Consulting Services** said that there was empirical evidence that esops produced a higher rate of growth, at least in some companies which had adopted it: "My own studies of esops in Wedgwood and Pilkington show better productivity is likely to follow when esops are part of an engaged management," he said.

Stuart (James) said that of the 3,400 tax-approved Eso plans recorded in 2014, there were only 400 SIPs and 270 SAYEs. As for the 2,450 EMI plans in that year, they covered just 20,000 key employees in all. "Where is the focus?" he asked. Stuart said that in the tax year 2012-13, about 160 companies issued free shares, which were effectively tax-free bonuses. A year later, companies issued 560,000 free shares. "This tells me that some companies are using SIP as a bonus plan, so it you are not using SIP, then why not?" he demanded. Only larger companies were using SIP now, he added.

Less than 20 percent of quoted companies in China had any Eso plans, said Stuart, though many knew that in order to attract talent, they would have to use stock option plans to lure high-performing executives away from multi-nationals.

Euan Fergusson of conference hosts **White & Case** asked whether the growing tide of regulation might put parts of the share plan industry out of business. Euan didn't think the risks on the corporate governance side were as high as all that. "The UK share plans industry is well regulated, but not over-regulated. We are fortunate to have so many tax-advantaged Eso plans in the UK," he added. Euan revealed that the controversial Employee Shareholder Scheme (ESS) was proving popular, because it delivered Capital Gains Tax advantages. "We are doing a great deal of ESS, driven by the CGT advantage," he said. "We are doing a lot of Growth Share schemes too, which appear to be relatively safe for the time being, from the HMRC perspective."

Euan warned that major changes in data privacy coming into force in the first quarter of 2018 under the EU General Data Protection Regulations would affect everyone in the room. There would be large fines – the greater of €20m or up to four percent of global turnover – for serious breaches. Much greater harmonisation was coming across the EU and there would be "much greater scrutiny of the internal handling of data," he said.

As for the democratic vote issue regarding employee shareholders, the fact was that some companies allowed employees to vote at agms or egms, but others did not do so, largely on cost grounds. Francis O'Mahony of BT interjected that his company invited all its SIP participants to vote.

Graham Ward-Thompson of **Howells Associates** discussed insider management issues and the market abuse regulations, which would hit the industry from July this year. The EU regulation rode roughshod over the UK Financial Conduct Authority (FCA), said Graham. The idea was to bring uniformity to the operation and surveillance of the financial markets over issues like insider lists; for example, who within the company had access to price sensitive information or whether individual employees could exercise share options during the company's closed period. Graham showed on slide the disclosure requirements on companies and their advisers under the new regulation. For example, with insider lists, no over-writing was to be allowed any more – every transaction or change had to be recorded – would that mean the end of Excel spreadsheets?, he asked. Multinational companies faced particular problems. A UK company with Russian employees had to have all their key details on file too, including home and personal phone numbers. There were worries about what and when notes should be recorded when (say) a company chairman received news of a takeover bid for his company over the weekend. Smaller companies who were listed on AIM would have an extra five months before the new rules applied to them. Howells had new insider management software – a package called IMTrack - to help companies face the new data challenge.

Francis O'Mahony of **BT,** assisted by **Bob Birkhead** of **Equiniti**, delivered a combative presentation about BT's all-employee share plans, offering participation to 87,000 employees across the globe. Francis explained that BT believed in long-term employee share ownership, which is why it offered

only a 10 percent discount to market value on three-year options for its UK Saveshare, compared to a 20 percent share option discount for a five-year plan. BT's maximum Saveshare savings limit per month was £300 and not the maximum £500 permitted by the Treasury as tax-protected. The US was the exception because there BT offered an employee share purchase plan, which had a creditable 27 percent participation rate. A five-year Saveshare which had matured last year attracted headlines because some employees gained more than £50,000 through their participation. "It delivered a £1.1bn pay-out to our UK employees," said Francis. "We flagged up the CGT implications to all concerned and we studied the timing of the dividend award," he added. Technology had changed everything – 85 percent of employee applications to join BT share schemes were made online, with a further five percent and growing made via SMS – leaving just ten percent of applications made by phone. Participants had a single sign-on through their systems to their share ownership portals and many monitored BT's share price fairly closely. Gradually, employees were saving more, with more using ISAs and transferring share holdings to their spouses for tax reasons. The introduction of global nominee accounts for overseas employees would increase the likelihood that they would retain all or most of their shares, BT believed. On employee shareholder democracy, BT was keen that employees should vote their shares, as well as receive financial gain, said Francis. BT facilitated the transfer of employee shares into pensions and ISAs, if that was what employees wanted. "We are concerned about the risk of having too many eggs in one basket, which is why we use a Standard Life tracker fund to encourage diversification of holdings," he added.

David Ellis of **KPMG** examined the latest trends in executive remuneration. The media had made hay with recent huge executive reward sums which had been distorted by the pay-out of long-term incentive plans (LTIPs), whose terms had been set at or near the bottom of the world financial crisis in 2007-8, he said. Reward regularly included 20 percent as cash contributions in lieu of pension.

One third of ceo salaries were held flat during the past year, said David. However, bonuses had proved "remarkably resilient" to the level of company performance – bonuses had not moved much, even if the level of profit had gone down. Nevertheless, the percentage of companies with 20 percent or more of their shareholders voting against the annual remuneration report had fallen slightly, compared to the previous year.

Shareholder engagement was on the up, backed by strong institutional voting recommendations. There was an "incremental improvement in company behaviour vis-à-vis shareholder value," added Mr Ellis. The majority of quoted companies had malus and clawback provisions within corporate variable remuneration policies, following updates to the Corporate Governance Code, but they had not been tested, he said. Furthermore, there was confusion over the interpretation of the Code – whether, for example, it was malus and clawback, or one or the other.

Most companies required their ceos to have shareholdings within the company equivalent to a median 250 percent of base salary – 'skin in the game'. However, one third of top companies had departing senior executives during the year and the majority were classed as 'good leavers' and kept their equity incentive awards, albeit often pro-rata.

Companies were not required to disclose their full remuneration *policy* if it was not subject to a binding vote in the year of reporting, but the majority disclosed the full *report* in order to provide context for remunerations decisions during the year.

Though shareholders wanted increased transparency on the link between remuneration and strategy, only 20 percent of companies demonstrated a detailed link to strategy through cross-referencing between the remuneration report and the strategic report, he said. Almost half of FTSE 350 companies pleaded commercial sensitivity as a rationale for excluding retrospective annual bonus targets from their annual reports on remuneration.

Fred Whittlesey of Seattle-based **Compensation Venture Group** characterised US executive compensation trends as "an escalating battle among stakeholders." Corporate social responsibility had triggered some bottom up changes and 'Say On Pay' was bedding in. Among the Russell 3000 companies, there had been a handful of failed votes each year since 2011, but these were companies that most people had never heard of, said Fred. The majority of failed votes concerned companies with negative total shareholder return and a market problem loomed because many were in the oil, gas or mining sector – which had been routed in stock markets recently.

Another big problem was that the US government still did not want to regulate executive reward, he said. However, US companies would soon have to declare the ratio between their ceo's 'pay' and that of an average line worker for the same employer. This could have "huge" potential effects, such as refusals to accept bonuses, founders giving shares to an employee long term incentive plan and big rises in the basic wages of line workers.

Increasingly, shareholders were requesting sustainable company policies regarding the environment and/or health and safety, as well as corporate social responsibility in general – especially in the extraction, utilities and financial services sectors, said Fred.

Pay for performance was now much more common in corporate remuneration metrics.

TSR was being supplemented by pay for performance indicators in many companies.

Even the US Department of Labor was advising pension plan investors about investments selected for their collateral benefits – such as biodiversity, waste management or community relations.

Cara Hegarty of **Linklaters** presented on two issues – the gender pay gap and ceo pay ratios. She told delegates that the UK government had promised legislation shortly to force companies to disclose their gender pay gaps. Female employees' pay on average lagged between 16 and 19 percent behind that of their

male equivalents, depending upon which sector and at what level they worked, said Cara. "This is an equality issue – and not a gender issue," she said. There were exceptions, however – women under 35 years old tended to earn more than men at the same age, but men tended to earn more per hour than women as they grew older.

More than 200 companies to date had signed up to the Equality Act 2010 which had given the government power to introduce gender pay gap reporting requirements. The principle of equal pay for equal work had been crystallised in the Equal Pay Act 1970, but only after 2008 had case law emerged giving guidelines on the equal value of jobs, based on skills and experience. Tribunals could now order pay audits when employers had lost equal pay or sex discrimination pay claims. Offender companies could be named and shamed on websites for three years. As a result, there were many out of court settlements, said Cara.

On ceo pay ratios – the 'fat cat' register – she said that from next January, US registered companies would have to disclose their ceos' total annual reward, plus the median annual reward of all employees and a ratio of these amounts. For the EU, the pay ratio requirement had been removed from the Shareholders Rights Directive. There would be annual disclosure of the relative change of executive directors' pay over the past three years and its relation to both general company performance and average employee pay. However, increased disclosure requirements for occupational pensions would put pressure on UK companies to disclose which criteria they used in their executive remuneration reports.

Lively discussions about Employee Ownership Trusts (EOTs) and international reporting and compliance were generated by the trustee panel, which was chaired by **Paul Anderson** of **Bedell Group**, assisted by **Brendan Dowling** of **Appleby Global** and by **Tania Bearryman** of **Elian**. Paul said that trustees were meeting all the time in Jersey about the obligations of US Foreign Account Tax Compliance Act (FATCA) - the UK version of which would become part of the OECD Common Reporting Standards (CRS). Although Jersey was "on a different page," it would follow UK practice, he said. The EOTs were a major development in terms of work for trustees and were having a considerable impact, though costs like share valuations were a factor. Brendan posed the question as to whether the direct ownership of companies implied by EOTs was a more responsible form of ownership. Certainly, indirect employee ownership, as in Eso, was easier to manage.

Tania said that although there was a lot of talk in the market about setting up EOTs, when owners realised that they would have to give up more than 50 percent of the company, they tended to pull back. A key issue for trustees was risk – for example company pension funds in deficit – so did you put in a special purpose vehicle to tackle this? Another headache for trustees was the risk that the new look company didn't do well.

David Craddock of **David Craddock Consultancy Services** explained the worldwide appeal of employee share ownership. There was a clear consensus among political parties that Eso "worked" and was "good," he said. Socialists could claim that Eso was about redistribution of wealth; liberals could say it was about individualism and freedom, while conservatives could say that Eso represented property rights.

Key to the advance of Eso had been the passing of the US Employee Retirement Income Security Act in 1974 (ERISA), inspired by the work of Louis Kelso. This recognised Esops as a special form of defined contribution pension plan that could receive contributions and borrow money to fund the purchase of shares, said David. He produced Eso case studies of plan histories from the US, Singapore and South Africa (SA), where he had worked with clients. SA mining companies gave large amounts of free shares to black employees, which was seen as a "necessary corrective" to historical economic injustice. In SA and in Zimbabwe, the Black Economic Empowerment movement held sway and this had led to compulsory employee share ownership, but the challenge was to ensure that the benefits of Eso in SA were largely economic, rather than political or symbolic, he added. Within Europe, Eso had a long-term role to play as helping to reduce unemployment, reinforcing sustainable industries, encouraging private companies and employee loyalty.

Kevin Lim and **Steve Kavanagh** of **Solium** discussed the challenges of foreign asset reporting for the share plans industry. They looked at the impacts of FATCA, the Common Reporting Standard and the emerging Data Protection Regulation, among others, in terms of client employee data holding and reporting. Some of these were perceived as being weapons in the fight against widespread tax evasion. The impact of CRS was so broad that individuals could find themselves even filling in details of their golf club memberships, said Kevin. A huge amount of extra info would have to be stored and read, but the industry had to be ultra careful about getting their processes correct because there would be severe penalties for 'non-compliance.' Kevin and Steve wondered whether the relentless tide of reporting obligations would put off employees from participating in future broad-based equity plan launches, because even participating employees, as well as plan administrators and the company itself, faced having bureaucratic tasks imposed on them.

William Franklin of **Pett Franklin** revisited the smouldering issue of share scheme accounting, as a post-implementation review of accounting standard IFRS2 got under way. That standard was riddled with errors and inconsistencies, he said. Smaller companies were often the most badly hit by the impact of the standard because they tended to be less liquid and had higher volatilities. The last 15 years had seen a shift from share options to share awards in big companies, in some cases because of the accounting costs. It was ironic that all Eso plans were covered by the UK

standard, but most were exempted by the US version.
"This is a time to protest," said William, who is a chartered accountant. "This issue is too important to be left to accounting experts." He accused the UK branch of the International Accounting Standards Board of having the reform of share schemes put into a box labelled 'too difficult to deal with.' He said that the key elements to essential reform of IFRS2 were: exemption for all employee share schemes from the standard; unquoted companies should be excluded and there should be a limit to expense in the consolidated accounts of quoted companies. The chairman promised to return the topic to the Centre policy agenda.
Jeremy Mindell of **Primondell** considered how share scheme tax relief works and how it could operate in future. The context was that the Treasury may further cut pensions tax reliefs in favour of an ISA type treatment in which there was no tax relief at the start and no tax due at the end. By comparison, tax reliefs for approved share schemes had improved in recent years, though the danger was that they could go the same way as pensions tax relief, warned Jeremy. However, for the time being, SIP participants could double their current tax reliefs by shifting their holdings into Self Invested Private Pensions (SIPPs), he said. They would obtain tax relief on contributions and 25 percent of the final value of the holding would be tax free on exit. SIP shares grew tax free and so employee shares were part of the new armoury that was being developed for long-term savings.

VIENNA:
Affordable fees at annual conference June 1-3
The Centre has slashed attendance fees for members who wish to attend its 28th annual European conference to be held in the five-star Steigenberger Herrenhof Hotel**,** in central **Vienna**, on **Thursday/ Friday, June 2 & 3** this year.
Practitioner (service provider) speakers are being asked to pay only **£825** for the Centre's conference package, comprising two nights' half-board accommodation in the Herrenhof (June 1 & 2) + conference + cocktail party invite + coffee/tea break refreshments and bound delegate handbook. Speakers representing plan issuer companies will pay just **£525** for the same package. No VAT is charged on these fees, as the event takes place outside the UK.
Member **delegate** fees for the package have been cut too - reduced from £1,050 to **£950** for all practitioner registrations before **March 22 -** and from £745 to **£675** for plan issuer delegates. However, the non-member rate for practitioners remains unchanged at £1,750. The package rate for member trustee panellists is **£950**.
Fred Hackworth, the Centre's international director, said: "These reduced Vienna attendance fees represent a good deal for members indeed, especially when you consider that the package costs the Centre almost £500 per person at current exchange rates.
"We have a first-class programme of speakers and you should not miss this opportunity to participate in the open sessions, network with leading figures in the industry and enjoy the ambiance of Vienna. To avoid disappointment, as the Centre holds a fixed allocation of rooms for delegates in the hotel, you should register for the conference as soon as possible."
The programme features presentation topics from Austrian and German companies, as well as from the UK and the US - such as **Willis Towers Watson**, **Global Shares**, **Lewis Silkin**, **Pett Franklin**, **Solium**, **Strategic Remuneration**, **Voestalpine** and **White & Case. ButcherJoseph**, the US Esop investment bank and California based **SunPower Corporation** will deliver case studies. **Mark Higgins** of **Vodafone** will lead a panel group of employee plan issuers who will discuss latest issues with advisers and **Grant Barbour** of **Bedell Group** will be among the trustee panellists. In addition, **Dr Barbara Kölm**, Director of the **Austrian Economics Center**, will moderate a panel discussion on employee share ownership in Austria and Germany.
Two major case studies are already in place:
**Maintaining employee ownership while achieving growth,* which features a US employee-owned company whose objectives are to maintain its employee-owned status while positioning itself for continued international expansion. Highlights include corporate restructuring considerations, designing management incentives, and improvements to its balance sheet. This double-header will be delivered by Keith Butcher, managing partner, ButcherJoseph & Co., assisted by the ceo and the company secretary of the US-based company.
**Bundled employee shareholder rights at Voestalpine*, an Austrian steel company. More than 24,000 employee shareholders are involved in a structure which gives them voting rights in a collective voice via a foundation.
An informal delegates' dinner will be held in Vienna on **Wednesday June 1**, the night before the conference begins and where the networking gets under way.
The Centre offers members sponsorship opportunities for Vienna, including whole event sponsorship (£3,250), entitling the sponsor to full branding rights and free seats – and separate partial sponsorship offers - for the conference cocktail party (£1,000) and our Vienna e-brochure logo (£550), with repeat mentions in both *newspad* and on the Centre events website until August in all instances.
If you plan to sponsor, speak or attend, e-mail Fred Hackworth at fhackworth@esopcentre.com, with copy to the Centre at esop@esopcentre.com.
The 100-year-old Herrenhof is situated in **Herrengasse,** near the Kohlmarkt and Golden Quarter in the old city centre - a few minutes' walk away from historic landmarks, such as the Hofburg Palace, Café Central, the Spanish Riding School, the Sisi Museum, the state opera house, Burgtheater (Imperial Court Theatre) and gothic St Stephen's Cathedral.

JERSEY: April 15
This year's share schemes conference for trustees, organised in conjunction with the **Society of Trust & Estate Practitioners** (STEP) in Jersey, will be held at the Royal Yacht Hotel in St Helier on **Friday April 15**. The annual half-day conference is the industry-leading event for all those interested in share schemes and employee benefit trusts.
Delegates will hear from David Craddock of **David Craddock Consultancy Services**, David Pett of **Pett Franklin**, Graham Muir of **Nabarro**, Rosemary Marr of **STEP Jersey**, and Paul Malin of **Haines Watts**. The presentations will cover share valuations, JSOPs, employee shareholder shares, EOTs and staff retention.
The panel discussions are always popular and interaction. This year's trustee panel, comprised of Helen Hatton of **Sator** and Tania Bearryman of **Elian**, will focus on the administration of legacy schemes. Sara Cohen of **Lewis Silkin** will lead the new EOT panel, and will be joined by her colleague Ann Tyler and David Pett, a leading member of the Centre's new EOT Group.
Attendance will qualify you for 3.5 hours CPD credit with the Law Society.
Registration
Centre and STEP members: £325
Non-members: £450
There is just over a month to go, so book now to avoid disappointment. To register, email the names and contact details of all delegates to esop@esopcentre.com or call 020 7239 4971.

Centre urges BIS to revive broad-based Eso
Centre chairman Malcolm Hurlston is targeting the department for Business, Innovation and Skills in a campaign to pump new oxygen into the broad-based employee share ownership movement. Alarmed by the recent fall in the use of some UK tax-approved share schemes, Mr Hurlston is urging **Business Secretary Sajid Javid** to take action to encourage more companies to adopt Eso.
Earlier, the chairman wrote to a senior BIS official outlining the apparent reluctance of many smaller and mid-ranking quoted companies to install broad-based employee share schemes. Mr Hurlston told him: "Employee share ownership has been all over the place governmentally over the 30 years since I founded the Centre, but with Sajid's enthusiasm we have a rare opportunity.
"In a sense, the problem has been that neither the Treasury nor DTI and its successors took clear responsibility. HMRC is quasi-autonomous and we had the brief and helpful attention of the Office of Tax Simplification. Then there is the Cabinet Office.
"The annual stats on employee share ownership (in particular the detail of share scheme take up) creep out annually from HMRC on a summer Friday afternoon. Despite sometimes knowing ministers rather well I have only once over the whole period found a single minister anywhere ready to take the comment opportunity. That was Shriti Vadera, emboldened no doubt by straddling the departments and being a friend of the PM.
"The annual HMRC statistics record use of the schemes. They conceal a decline in all-employee share activity. The number of schemes is exaggerated by the popularity of EMI which, though highly effective, benefits relatively few people. I shall send you a reasoned analysis of the stats.
"I appreciate that BIS is not a department with deep pockets but a great deal can be achieved by other methods. Tax breaks are only one way of indicating what government approves of.
"The use of share schemes has declined less among multinationals. At one stage they went to great lengths to replicate worldwide UK style tax breaks. Now many ignore tax and steam ahead convinced of the merit of creating a sole focus for employees in different companies in varied jurisdictions.
"We can therefore look for activities for which the Secretary of State has the enthusiasm and the department the capacity. Here are a few of the things which might figure on our agenda:
Exports: many Centre members are lawyers, accountants and other experts who ply their trade internationally. To support them the Centre runs world and European events. Our next European event is in Vienna in June (the first event was attended by John Cope, himself an enthusiast and small business minister at the time).
Employee shares and pensions: we started in the era of Mrs Thatcher for whom pensions were sacrosanct. Times have changed. At the Centre we are now developing an approach to encourage employers, administrators and perhaps government to make transfers from shares schemes to SIPPs and NISAs the norm. Our figures show the average share scheme participant could build up over a working lifetime two £1m pots!
ACAS: concentrates on trust based employee ownership. It needs to be even-handed.
CSOP: the Company Share Option Plan is the only scheme which works for the low paid and part-timers because it is so low cost to start and run. That is its problem too: because there is no fat for intermediaries there is no pull effect. Government can provide the nudge.
Shareholder rights: this latest plan came directly from the chancellor (I was there to see your colleagues entirely blindsided). It was greeted by roars of protest but is by no means all bad. However, there is little evidence it reaches much beyond the top echelons. It needs a tweak to require an all-employee element.
Shareholder Executive (or other locus): is there enough advocacy of employee share ownership when privatisation is on the cards? Might one of the non execs take it on? We had a near disaster here under the Coalition.
Coalition legacy: from John Cope to the Coalition, the small business minister was my main point of contact. Under the Coalition employee share

ownership hardly got a look in. There were some good things. First there were some meetings at which the Treasury and HMRC were present, even if for a limited purpose. Secondly the EOT is proving worthwhile. The danger lies in being seduced by activities appealing to *Guardian* readers rather than affecting the mass ownership we aim at. The same is true of the dark arts of the Cabinet Office.

"These are just a few topics. Many more are doable. I am convinced that with the Secretary of State's leadership and modest resources we can harness goodwill and bring millions more into the wages of capital. I look forward to scoping the field with you," added Mr Hurlston.

Google: £33m tax for UK staff share option awards

Chancellor George Osborne's claim that the government secured a major corporation tax deal with **Google** was tarnished after it emerged that a quarter of the £130m gained by **HMRC** covered the US company share options scheme, revealed *The Guardian*.

Filings by Google's UK subsidiary show that £33m of the funds finally paid to the Treasury were to settle a wrangle over share options handed to staff, which the US business had argued were exempt from UK tax. The company's accounts show that the government was only able to claw back less than £100m in corporation tax from Google for the 2005-2014 period, and not the £130m the chancellor claimed. MPs and foreign governments have criticised the deal for allowing Google to generate billions of pounds in profits from its UK business and pay little corporation tax.

The Treasury select committee is examining the deal, while several ministers have conceded that the outcome of the tax dispute was disappointing. **Shadow Chancellor John McDonnell** said there was an important distinction between a settlement for unpaid corporation tax based on Google's profits and the need to pay tax on share options for staff. He said the low rate of corporation tax paid by Google, which was already "totally unacceptable", needed to be independently examined. "If true, this is truly shameful behaviour by the chancellor. He dressed this deal up as a 'major victory', when in reality it is a defeat," McDonnell said. "It adds weight to my calls for why we desperately need the government to publish the detail of their deal with Google. Because having greater transparency of this Tory deal is the only way we can get to the bottom of whether or not taxpayers are getting value for money."

As it had already agreed to pay about £70m in addition to the £130m settlement, Google's effective tax rate is below three percent, compared to the 20 percent headline rate of corporation tax. Richard Murphy, a tax expert who advises the Labour leader, Jeremy Corbyn, on economic policy, said that "most major US corporations had attempted to depress their tax bills by charging subsidiaries the cost of share options to staff, but that all had been ruled out by HMRC". He said it was unclear why HMRC had failed until now to force Google to comply. "What was already a poor deal for the government is now looking even worse," Murphy said. "And it looks like HMRC's mess-up. I would say it clearly shows that HMRC is under-resourced and is struggling to cope in negotiations with major corporations." Business Secretary Sajid Javid criticised the tax settlement between Google and the UK, just a week after the Chancellor hailed it a "major success". Mr Javid said the controversial £130m deal was "not a glorious moment" for the government and that "more needs to be done" to ensure large companies pay the correct corporation tax. "I speak to thousands of companies small, medium-sized as well as, of course, large companies, and there is a sense of injustice in what they see," he said.

A Google spokesperson said: "After a six-year audit by the tax authority, we are paying the amount of tax that HMRC agrees we should pay. Governments make tax law, the tax authorities enforce the law and Google complies with the law."

There was more embarrassment for Mr Osborne when French finance minister **Michel Sapin** revealed that the French state was pursuing Google for the payment of €1.6bn (£1.3bn) in back taxes from 2005. "The payment agreed by Google and the UK Treasury was pitiful in relation to the huge activity of Google in the UK during those years," said Mr Sapin.

SAYE-Sharesave participants save more

The raised SAYE-Sharesave monthly investment limit of £500 encouraged employee participants to save slightly more last year - £136 per month, on average, compared to £129 in 2014, reported Centre member **YBS**. Three out of four YBS clients are taking advantage of the raised saving limit and both participation rates and average savings have gone up, said its annual bulletin. During 2015, YBS managed 144 Sharesave maturities and 131 Sharesave grants, including 11 new schemes. In addition, YBS managed 18 corporate actions, including Schemes of Arrangement, share consolidations and rights issues.

Centrica's US matching stock purchase plan

Centrica revealed details about its North American employee stock purchase plan in a routine announcement to the Stock Exchange: "Each month, the administrator uses participants' contributions (between one and five percent of base salary limited to a maximum investment of $10,000 per annum) to purchase shares in the market. These shares are called Partnership Shares and are registered in the name of the participant, who may hold both fractional and whole partnership shares. For every two partnership shares which participants still own after two years the company awards one matching share on the second anniversary of the shares purchase. Participants may change their monthly savings rate whenever they wish. The ESPP is open to employees who have continuous service with the Centrica's North American participating companies."

Company sale into an ESOP

Centre member **ButcherJoseph & Co.** advised **Triad Manufacturing** in its sale to the Triad Manufacturing Employee Stock Ownership Plan (ESOP). St Louis, Missouri, based Triad, led by co-presidents Mike McCormick, Bob Hardie and Dave Caito, has been manufacturing custom fixtures and retail store environments for almost 25 years. Mr Hardie explained, "Selling our company to an ESOP allows us to reward the employees who were instrumental in growing our company from a small operation with a couple of machines to the world-class company that it is today with a million square feet of operations in St Louis as well as our operations in China and Brazil. We are proud to preserve the legacy that we built as a team."

Keith Butcher, ButcherJoseph's co-founder and managing partner, said: "This was an extremely thorough transaction process in which we helped Triad explore all of the Company's exit scenarios before concluding that a sale to an ESOP would best fit their objectives. We continue to appreciate the opportunity to serve successful companies all over the country, and we are increasingly impressed with the number of high-quality businesses like Triad that reside right here in our backyard of St Louis, Missouri." St Louis based ButcherJoseph is an investment bank with offices in Chicago, Washington DC and Charlotte NC. It provides investment banking advisory services to middle market companies. With more than $7bn in successfully completed ESOP transactions, ButcherJoseph is a leader in US ESOPs.

Moving the goalposts

Rolls-Royce is consulting investors about a plan to make it easier for executives to earn bonuses despite the company's disastrous performance. The FTSE 100 engineer wants to lower the targets top personnel must hit for share incentives, which are measured on Rolls's stock market performance, in an effort to boost morale and hold on to key managers. It is proposing to change how its earnings per share (EPS) target is measured, in the face of downgrades to forecasts for Rolls's financial performance in its recent profit warnings. The change would affect the company's three-year performance share plan, and, instead of considering EPS over the full period, would look only at the last two years.

With another poor set of results on the way, adopting a shorter period would make it easier to hit targets if a turnaround takes effect. Rolls's ceo, Warren East, confirmed the plan as the company unveiled a sharp drop in sales and profits for a second year running and slashed its dividend to bolster its finances. In an attempt to turn Rolls around, Mr East has axed one in five managers in the top two tiers of the company, with more posts due to go, and is targeting between £150m and £200m in annual cost savings. "We need to make incentives appropriate. It is tough times for investors as well, but we need something in place which works," he said.

The plan may not require investor backing as it is a technical change and affects only a dozen top Rolls executives. However, the ceo said major shareholders had been consulted and were "very supportive". The proposal would see the maximum in shares that the incentive pays out cut from 180 percent to 150 percent of Mr East's £925,000 salary. Other executive directors would see their potential payouts cut from 150 percent of their salary to 130 percent.

Rolls-Royce claims to be on track for a 60 percent market share of engines for Boeing's latest 787 jet airliner. Mr East added: "We need to make leadership incentives appropriate. If people know they are not going to get what they thought they were going to get because the starting line has moved significantly, then it's very de-motivating. It is tough times for investors as well, but we need something in place which works."

One leading investor in Rolls expressed broad support for the changes, saying: "We have seen much more controversial changes to incentives."

HMRC tax policy split exposed in EBTs case

A serious split within HMRC's policy division was exposed in a recent High Court case over settling the tax liabilities of certain offshore schemes where Employee Benefit Trust schemes were used. A High Court judge dismissed judicial review applications brought by nine companies, all of whom had sought to use the **Liechtenstein Disclosure Facility (LDF)** to settle tax liabilities arising from their EBTs. Their advisers had asked HMRC whether the LDF could be used to settle EBT liabilities, reported Centre member **Deloitte.**

Since 2006, HMRC has offered disclosure facilities to encourage individuals to declare unpaid taxes due on overseas bank accounts or structures. These include the offshore disclosure facility (ODF), the disclosure opportunity (NDO) and the LDF, now expired. These facilities enabled HMRC to collect sizeable sums - the total yield generated by the LDF standing at more than **£1bn**. The LDF stemmed from an agreement signed between the UK and Liechtenstein governments which enabled anyone with unreported liabilities connected with assets held overseas to settle with HMRC on favourable terms. These included:

- no liability for any period before April 6 1999
- a fixed ten percent penalty for periods from April 6 1999 to April 5 2009
- the ability to choose a single composite rate rather than calculate actual liabilities
- a single disclosures contact point and immunity from prosecution for tax offences

While the facility was designed primarily to disclose unpaid taxes relating to overseas accounts, it was possible to disclose even wholly domestic matters and still retain favourable terms.

The Crown Dependencies of the **Isle of Man**, **Jersey** and **Guernsey** enjoyed HMRC disclosure facilities too, though not so attractive as the LDF, but they too were closed on December 31 last year. HMRC has announced that there will be one final disclosure

facility to run between now and 2017. This coincides with the provision of tax information under the inter-governmental agreements (IGAs) in 2016 and the common reporting standard from 2017. HMRC is taking a more aggressive stance on offshore accounts and it is probable that there will be an increase in targeted investigations this year, said the magazine *Taxation*. Code of Practice 9 (COP9) and the contractual disclosure facility (CDF) may be used increasingly to pursue individuals who have not taken advantage of previously available disclosure facilities. In this EBTs case, the High Court was told that HMRC initially indicated that LDF would be available, "but there were differences of view within HMRC as to whether this was appropriate", said Deloitte. After internal debate, HMRC agreed that applications to use the LDF could be made and *thirteen* cases were registered. A further eleven cases subsequently applied for registration, but by that time HMRC had changed course and decided that the beneficial terms should not be available to the later applicants. Three HMRC Commissioners concluded that HMRC should offer the LDF to those whose registration had been accepted but not accept registration from anyone else. Judge Whipple held there was no unfairness in refusing to apply the full benefits of the LDF to a taxpayer who was not registered. There was no inconsistent or discriminatory treatment. See http://deloi.tt/1UqqiGb
***Company ownership and control:** the Small Business, Enterprise and Employment Act 2015 contains measures to make it easier to see who owns or controls companies in order to increase accountability. This will be done by establishing a central public register of 'people with significant control' (the PSC register) which will record share ownership and also details of those who control a company indirectly e.g. by being able to vote on shares owned by others. Companies will be required to keep a PSC register from April 6 this year. They will need to send the information to Companies House from June 30 2016 onwards. The draft People with Significant Control Regulations were laid on January 25 2016, together with draft guidance on the meaning of 'significant control' in the context of companies. General guidance will be published shortly. See http://deloi.tt/1PjuCHb

Rank-and-file pay rates still lower than 2008

Average pay in Britain is still worth £2,270 less in real terms (i.e. *after price inflation is factored in*) than it was in 2008 — a shortfall of £44 a week, a new analysis by the TUC revealed. Although there were regional variations in average earnings lost between 2008 and 2015, all UK regions suffered significant pay packet losses. The TUC analysis used the official Annual Survey of Hours and Earnings for its analysis and the government's preferred CPI inflation measure rather than the RPI inflation rate preferred by union negotiators. The losses across the countries and regions range from £4,415 in London down to £1,049 in the North East. In percentage terms, the real-terms loses range from 12.5 percent in London down to 4.8 percent in the North East, with a UK average loss of 9.2 percent.
*Seventy percent of retail chain respondents are undecided about their approach to implementing Chancellor George Osborne's **National Living Wage**, according to research by Centre member **Willis Towers Watson**. Its survey of 28 retail chains with between 5,000 staff or fewer and more than 100,000 employees, found that 85 percent of respondents will wait until April 1 this year before making pay changes for their employees aged 25 and above. The research found that: fewer than one in 12 of respondents with between 10,000 and 49,000 employees plan to offer at least the National Living Wage rate to all staff, regardless of age; around two in five of respondents pay more than half of their workforce less than the National Living Wage and one third said that a high proportion of their lower-paid workers are over 25. Mr Osborne's statutory National Living Wage comes into effect for workers aged 25 and above from April this year. It will initially be set at **£7.20 an hour** — 50p higher than the current **National Minimum Wage** rate of £6.70 for staff aged 21 and over. The National Living Wage is distinct from the voluntary **Living Wage**, which is calculated according to the basic cost of living and advocated by the Living Wage Foundation. This voluntary rate is £8.25 an hour, rising to £9.15 in London.
*The amount UK employees produce per hour remains stubbornly low and the latest government statistics reveal the biggest gap with other leading western economies since records began. Something that has been overlooked when it comes to solving the UK's productivity problem is the imbalance of power between employers and workers in the economy, claimed **David Spencer** Professor of Economics and Political Economy at Leeds University. "Low productivity in the UK is a symptom of a labour market and workplace in which workers are too weak and employers are too powerful. It reflects the dysfunctional nature of the UK economy where employers have the relative freedom to pursue low investment routes to higher profitability that are ultimately detrimental to long-term productivity growth. To break the cycle of low productivity there is a need for more radical reforms that tackle the imbalances of power in the UK economy. Sticking with the status quo, by contrast, will perpetuate the current malaise of low productivity and sluggish wage growth, said Prof Spencer, writing in the Anglo-French *The Conversation* website.
"The short-termism of employers and the lack of sustained pressure to invest in new technology, skills and productive capacity help to explain why productivity has remained low in the UK. Another problem is the proliferation of low quality jobs in the UK. Jobs have been added in sectors such as retail and hospitality – these are low paid, low skill, and low productivity. The march of the shop workers, hotel staff, and cleaners provides another reason why

overall productivity in the UK has remained low," he added. "Productivity will only recover, and be sustained at higher levels, once measures are taken to improve workers' bargaining position. The issue of ownership of assets matters here and the welcome move by the Labour Party to consider how workers might acquire assets – including employee shares - speaks to the kind of measures required to tackle the low productivity cycle that the UK finds itself in."

Does UK executive reward need to rise?
Senior directors in North America earn almost £12m a year, on average, putting the country top of the global high pay rankings, a study, published by the **CIPD,** has revealed. The UK and Germany came second in the high-pay league with median remuneration of less than half that amount - £5.4m in both countries.
The findings, outlined in the report *Global Executive Compensation 2015: Survey of FT Global 200 companies*, prompted researchers at **E-reward.co.uk** to question whether the UK should raise executive pay to stay competitive. However, the **High Pay Centre** (HPC), a left-leaning think tank, instead urged remuneration committees to be "tougher and braver" in their decisions.
The countries paying the least were Japan and China, where the median pay for executives was just over £0.5m. The survey was based on data gathered from across 25 countries in the world's largest 200 companies, including Apple, Facebook and Google in the US, and firms including BMW, Samsung, Honda and HSBC from other countries.
Steve Glenn, E-reward's head of executive remuneration, said: "Pay levels in Europe and elsewhere have not reached anywhere near the magnitude of those found in the US but some outside North America argue there are grounds for comparisons to be made due to the global market for top talent. On the other hand, calls for boardroom pay restraint continue to intensify, meaning companies wishing to match or even move towards US levels face some tough choices."
Stefan Stern, director at the HPC, said it was a self-serving argument to increase executive pay in line with the US, as it benefits those involved in the "systematic problem of high pay in this country", including those achieving high remuneration, advisers and head hunters. "People talk about the so-called global market for ceos but it is just not true. The majority of ceos come from within the organisation and there isn't this great transatlantic flow of ceos hopping around the world. It is not clear that salaries have to be truly internationally competitive as you are not really in competition," he added.
Charles Cotton, reward adviser at the CIPD, added: "You could argue that we are out of kilter with North America but you could say too that we are out of kilter with Japan and China who are paying their executives a lot less. What is important is what value the executives are actually bringing to the organisation - are investors getting a return on investment and are we rewarding the right behaviours in the right way?"
The E-reward survey found the median salary rate for principal directors in the top 200 global companies was just £968,647. The highest bonuses were generally paid by US companies, except group md of Hong Kong-based Hutchinson Whampoa, who received a bonus worth £15m. Next in the list were the chairman and ceos of Walt Disney, Time Warner and Boeing, reportedly claiming bonuses worth £14m, £9.3m and £9.28m respectively.

On the move
Davinia Smith of **Alter Domus** is resigning her position on the Centre's steering committee as she has changed her business role: "With a heavy heart I think that it no longer really appropriate for me to continue my membership of the committee. My current role has evolved considerably over the last year and I really have almost zero involvement in the share plans world. I have very much enjoyed the last 20 years working in share plans but the reality is that this part of my career may now be finished, although you never know what might happen in the future!" she told *newspad*.
Fallon Ephgrave will be reading copies of *newspad* from her new desk at **Capita,** having left brokers **Numis**.
Equatex, the global share plan provider, announced the appointment of **Mitan Patel** as global sales and marketing director. This new role strengthens the Equatex teams across the company's key international markets and supports the group's growth ambitions. Mitan brings extensive expertise of both broad-based and executive compensation plans on a global basis. He has more than 15 years of experience in the international equity compensation industry and has previously held senior roles at **Computershare**, **Morgan Stanley** and **Citi.** Mitan has been involved with many industry award-winning plans for a number of high profile clients. Equatex supports over 200 international businesses and their 1.5m employees, providing customised end-to-end solutions from funding instruments to administration, execution, accounting and financial reporting. He will join Equatex on April 18 and be based in London. Equatex ceo Andrej Golob said: "We are delighted to welcome Mitan at this exciting time for Equatex. Our current focus is on delivering improvements in service excellence and on welcoming new clients on to our platform. In Mitan Patel we have found an experienced leader who will help us achieve our ambitions."
Global Shares, an industry-leader in the global equity plans software and administration arena, named **Kenneth Lockett** as senior vice-president, client relationship management, for the US region. Ken brings with him a wealth of knowledge after more than 20 years' experience in the financial services industry.
Julie Shepherd has started her new job as share plan manager at **Sage,** the software and business

advice company. Her co-ordinates are:
Mobile: +44 (0)7342 075900
e-address: Julie.Shepherd@sage.com

Share plans exemption in sight
Foreign multinationals who offer share plan participation to their employees within the EU can finally look forward to exemption from the Prospectus Directive within the next year or two, reported **Narendra Acharya** of **Baker & McKenzie**. On November 30, the European Commission published a proposal for a new Prospectus Regulation which is intended to repeal and replace the existing Directive. "It is anticipated that issuers not listed or incorporated in the EU will be entitled to rely on the employee share plan exemption from the EU prospectus filing requirement," said Narendra, a regular speaker at Centre international conferences.
"This development is welcome news for companies that have been required to file an annual EU prospectus for the offering of their share plan(s) in the EU, as well as for companies that have had to closely monitor reliance on one of the other exemptions from the EU prospectus requirement (e.g. reliance on the €5m exclusion).
"Under the employee share plan exemption, companies need not file a prospectus provided they provide certain disclosure information concerning the offer to employees eligible to participate in the share plan."
However, the proposal must work its way through the EU legislative process and so it is unlikely to become effective before late 2017 or early 2018, he added.

Executive reward
A third of **Aberdeen Asset Management**'s shareholders voted against the high pay awards made to the investment group's executives in the year ended September 2015, when it posted net funds outflows of £40.7bn. Ceo Martin Gilbert was awarded a £4.3m reward package, down from £4.8m in 2013/14 and below his record reward of £5.1m the previous year. Aberdeen promised to improve transparency around performance targets for executive bonuses following objections from institutional shareholders, but the funds manager, which specialises in emerging market and Asian funds, announced an 11th consecutive quarter of net fund outflows.
Tidjane Thiam, ceo at **Credit Suisse**, has asked the bank's board to slash his 2015 bonus by between 25 and 50 percent, after reporting its first full-year loss in eight years. Mr Thiam, who took over last July to lead a major restructuring of the bank, had pledged that the lender's bonus pool for 2015 would be 11 percent smaller than a year earlier. He had previously described remuneration as a "battle ground" — pointing out that he was not against bonuses for investment bankers if pay went up and down with performance, but noted that some bankers were unwilling to accept the "down" part. Credit Suisse said it would cut bonuses by 36 percent at its global markets division, which lost almost $3.5bn in the fourth quarter as it wrote down the value of distressed debt it held and took a huge hit to goodwill.
Deutsche Bank scrapped board bonuses this year after posting a record loss for 2015, with ceo John Cryan urging investors to be patient with his revamp of Germany's largest lender. "We all know that restructuring can be very challenging. It takes time, resolve and patience," said Cryan, as Deutsche reported fourth-quarter earnings. They included a €1.2bn loss in its investment bank, hit by legal costs and weak bond trading. Cryan said that the bank had lost ground in equities and pledged to invest in its research and sales units to recover market share. The bank's supervisory board had decided that the executive board will not receive any bonus for 2015, he added.
HSBC became the latest big European bank to cut pay, slashing pension payments to top executives by 40 percent after pressure from investors, according to people familiar with the matter. The change, contributing to an overall pay cut for ceo Stuart Gulliver, comes as many European banks are cutting remuneration for their top executives after a downturn in performance. HSBC pays its top managers a cash allowance in lieu of pension, which last year amounted to half of their salaries. But after investors complained this looked high compared to rivals, HSBC cut it to 30 percent of salary. The pension change comes after several recent reversals in remuneration policy at HSBC. The bank recently told thousands of managers in its UK retail and wealth management arms that they would not receive a pre-agreed pay rise. That came only days after Europe's biggest bank by assets dropped short-lived plans - following staff protests - to freeze employees' pay globally for the year.
Ocado's management team is in line to receive nearly £8m in share bonuses after the online grocer delivered its second year of profits. About 100 managers, including ceo Tim Steiner and fd Duncan Tatton-Brown, will share the £7.8m payout – up 54.5 percent year on year – after the company made a pre-tax profit of £11.9m in the 12 months to November 29, up 65 percent on the previous year. Sales rose by almost 15 percent to £1.1bn, partly boosted by nearly £74m in revenues from supply services to Morrisons' online business. Ocado also delivers Waitrose groceries as part of its own grocery service and runs specialist pets site Fetch and kitchen goods site Sizzle.
Former **Royal Bank of Scotland RBS** boss **Stephen Hester** is on course for a final payout from the bailed-out bank of up to £500,000 – *more than two years after he left.* RBS will confirm that it awarded Hester £1.7m in shares last March under a previous incentive plan, taking his total pay for five years at the helm to around £13m. *The payouts come despite an expected eighth year of losses at the Edinburgh-based bank and with the taxpayer's stake now worth less than half the amount the Treasury paid for it.* Hester is the beneficiary of long-term incentive plans (LTIPs) put in place before he was ousted as ceo in June 2013. RBS's last annual report revealed that Hester had received an £859,000 share award under the 2011 LTIP. The report said too that executives benefiting from the 2012 plan had met enough performance

conditions to be awarded almost two-thirds of the maximum number of shares they had been allocated. For Hester that meant picking up 480,000 shares worth £1.7m. The bank is expected to confirm the payout in this year's annual report. He will receive a final allocation of up to 323,000 shares in March as part of the 2013 plan. Last year's annual report hinted that executives benefiting from the 2013 plan will get similar allocations to last year – meaning Hester will collect 200,000 shares worth £480,000. Hester left the bank in June 2013, after a disagreement with the Chancellor over the bank's strategy. His pay was a long-running sore and Hester – who now runs insurer RSA – gave up a series of bonuses in the face of public anger. He earned an annual salary of £1.6m at RBS, took one £2m bonus and picked up £3m from the long-term pay plans. The bank's pay packages are less controversial than they once were. Top executives are no longer paid bonuses and ceo Ross McEwan has given share-based allowances – awarded to him by the board and approved by shareholders – to charity. The bank's bonus pool this year is nevertheless expected to run into hundreds of millions of pounds.

Remuneration roundtable for finance sector

Cliff Weight of Centre member **MM&K** is set to join an expert panel unpicking the pay of investment bankers and asset managers. The high pay of the investment banking and asset management sector is a lightning rod for critics, but surprisingly little is known owing to the patchy nature of disclosure for fixed pay, bonus pools and deferrals. William Wright of **New Financial** will walk attenders through his recent publication *Taking stock on pay: 10 things we know (and don't know) about pay at investment banks and asset managers*, which pulls together the information currently available. The event is organised by the Centre for the Study of Financial Innovation and takes place from 12.30–14.15 on Monday March 14 at the offices of Kemp Little in London. The Centre will be represented.

Why MiFID II matters for quoted SMEs

The European Commission published a proposal to delay the application date of the **Markets in Financial Instruments Directive** (MiFID)2 by one year to January 3, 2018, said Centre member **Clifford Chance**. The proposal takes the form of a draft Directive amending MiFID2 and draft Regulation amending MiFIR as regards implementation. The proposed regulation sets out measures to address the consequences of changing the date of application of MiFID2 on the Market Abuse Regulation (MAR) and Central Securities Depositories Regulation (CSDR). The proposals are intended to address exceptional technical implementation challenges faced by the European Securities and Markets Authority (ESMA), national competent authorities (NCAs) and market participants in relation to data collection, reporting and the transparency threshold calculation. They are intended to avoid legal uncertainty and potential market disruption too. The proposals set out an extension of the application for the entire MiFID2/R package, rather than a staggered approach, which the Commission views as necessary and justified in order to avoid possible confusion and costs to stakeholders. Contacts: Chris Bates +44 (0)20 7006 1041; Nick O'Neill +1 212 878 3119. International regulatory update editor is Joachim Richter +44 (0)20 7006 2503.

Competent authorities and market participants will have an additional year to comply with MiFID II, which aims to address the flaws in some of MiFID's underlying principles by reinforcing and replacing the current European rules on securities markets, said the *Quoted Companies Alliance.* Many of the key areas of MiFID II are likely to affect small and mid-size quoted companies, including:

SME Growth Markets: MiFID II introduces a new market classification allowing growth markets across the EU (such as AIM) to benefit from more flexible rules. This is a great opportunity for small and mid-size quoted companies to access capital markets and, once quoted, to benefit from a set of more proportionate rules that are more appropriate to their size and resource, thus providing opportunities to grow.

Deferred Publication Regime: Delayed trade reporting for abnormally large trades of shares is a feature of trading which mitigates the liquidity risk associated with material investment, particularly for smaller companies. After sustained campaigning by our Secondary Markets Expert Group, MiFID II Level 2 measures will revise the delays available, which could have had an unduly punitive effect on less liquid securities, such as those of small and mid-size quoted companies

Investment Research: The rules introduced by MiFID II could impair the ability of small and mid-size quoted companies to have research produced on them, decreasing their visibility and potentially limiting investment, thus consequentially having a negative effect on small and mid-size quoted companies' ability to raise finance, grow and create jobs. This reduction in investment research could lower demand from fund managers for research on SME quoted companies, as well as reduce incentives for brokers and analysts to produce it.

An extension of the MiFID II application date will impact on other legislation, in particular MAR and the CSDR. Regarding MAR, the Commission said that the existing concepts and rules would continue to be used until the new MiFID II application date, and that definitions such as SME Growth Markets would not apply until the new MiFID II application date. As for CSDR, MTFs meeting the criteria for an SME Growth Market under MiFID II would be allowed to apply a longer extension period for the settlement of transactions whilst their registration as

an SME Growth Market under MiFID II was ongoing.

Members slate plan to axe valuation checks

The Centre took up the cudgels immediately on behalf of members critical of HMRC's decision to withdraw – from the end of this month - the valuation check service it offers for PAYE Health Checks and ITEPA Post Transaction Valuation Checks (PTVCs).

Accordingly, the Centre is leading a lobby group of members, consisting of its EOT Group participants and steercom members who are urging HMRC to withdraw its decision to no longer process requests for ITEPA PTVC/PAYE health check valuations received after March 31.

Centre chairman, Malcolm Hurlston said: "The Esop Centre was disappointed to hear that SAV plans to withdraw these services as early as March 31. This is likely to have an adverse effect on the ability of companies—particularly smaller, unquoted companies—to implement and administer employee share schemes, and it may even discourage SMEs from introducing new employee equity plans.

"Companies will be concerned that this may greatly increase the risk of interest and penalties if they do not deduct what HMRC subsequently decides is not the correct amount of PAYE and NICs, as well as potential penalties to employees under section 222 of the Income Tax (Earnings and Pensions) Act 2003.

"Given the length of time it takes to design and implement new share plans, the two-month notice from SAV is inadequate. We ask HMRC to delay the planned withdrawal of services to allow for a full consultation into the effect it would have on unquoted companies.

We are particularly concerned about the effect the withdrawal will have on 'Joint Share Ownership Plans' (JSOPs) and growth shares. The JSOP involves the joint ownership of shares between an employee and (most often) an employee share ownership trust. Growth shares give employees an interest in the future growth of their company, and are a popular and effective means of incentivising senior employees in particular. In both cases, there can be significant uncertainty about the acceptability of market values because of the varied nature of these awards. It is difficult to see how HMRC could provide detailed guidance on how JSOPs and growth shares should be valued after the withdrawal of the post transaction valuation check. Post transaction valuation checks are essential in calculating a reasonable initial unrestricted market value acceptable to HMRC on a coordinated and consistent basis in each case.

"The proposal to improve the valuation check services for Enterprise Management Incentives, Company Share Option Plans, SAYE, SIPs, and Employee Shareholders is welcome. We would, however, like to be reassured that HMRC is not planning any withdrawal or scaling back of valuation check services akin to the plans for PAYE health checks and post transaction valuation checks. The Esop Centre would like to offer its expertise to support the improvement of SAV's important services in these areas."

HMRC said that its Shares & Assets Valuation (SAV) unit's valuation resources were being over-stretched and so the decision had been taken to terminate the service. It said that both categories of check often involved complex valuation scenarios, which absorbed considerable resource but result in no change to the valuation proposed. Currently, almost 90 percent of ITEPA Post Transaction Valuation Checks and PAYE Health Checks were accepted as submitted, said the HMRC statement.

Worse still, in members' eyes, was HMRC's additional threat that SAV would "examine the valuation check service processes relating to Enterprise Management Incentives (EMI), Company Share Option Plans (CSOP), Save As You Earn share option schemes (SAYE), Share Incentive Plans (SIP) and Employee Shareholder (ES) valuations *to consider how these services might be improved*," despite an assurance that in the meantime these valuation check services would continue as normal. Capital Gains Tax PTVCs, which SAV operates in conjunction with the Valuation Office Agency, would continue by way of the existing CG34 process, added HMRC.

William Franklin of Centre member **Pett Franklin** accused HMRC of having made a big mistake. He said: "We are concerned that HMRC's withdrawal of PTVCs and Best Estimate Valuations could be a precipitous action which will adversely affect share schemes for some unquoted companies and be harmful to taxpayers and counter-productive for HMRC.

"The present PTVC system whereby the company, following the award, can ask HMRC to consider the valuation on a coordinated and timely basis is a good and valuable system which has worked well for a long time and has delivered benefits from certainty to taxpayers and HMRC," said Mr Franklin. "It is only used for valuations which HMRC is likely to need to look at anyway in due course. It is a mistake by HMRC to withdraw the PTVC arrangement as this will lead to more work for it at a later date and less certainty for the taxpayer in the meantime."

He added: "At the October 2015 Fiscal Forum (a meeting between share valuation practitioners and HMRC), HMRC reported it faced increasing demands from taxpayers to agree share valuations generally. It appears that work pressures have intensified since then. However, Best Estimate and PTVC valuations are only a minority of the share valuations that HMRC have to do and it is not clear

what has caused this extra work load or whether these two particular very long standing procedures were the source of HMRC's problems.

"We consider an analysis of why HMRC is facing more work in this area is necessary and a consultation should be undertaken with all interested parties before any changes are made. Furthermore, if there are any changes, there should be a longer notice period before activation. The planning of share scheme awards often takes several months of preparation and so the short period of notice given is unreasonable," said William.

"It is not clear that the withdrawal of these arrangements will actually reduce HMRC's work flow. The Best Estimate process allows companies to operate their PAYE system with confidence and by giving certainty as to the value of the shares for PAYE calculations it is beneficial to HMRC because it streamlines the whole process of calculating and recovering the PAYE on a non-cash form of remuneration where there would otherwise be uncertainty as to the amount of taxation. It is a procedure which companies do not always make use of but where they do it is of value to them in providing certainty, which therefore is also of value to HMRC.

"The PTVC allows companies to go to HMRC on behalf of all their employees and reach agreement for Income tax (not just the PAYE collected by the company) as to the value of the shares awarded to them following an employee share award in an unquoted company. This allows the tax arising to be calculated on a coordinated and consistent basis and accurate tax returns submitted. Without this procedure, share valuation agreements with HMRC would have to occur following the submission of each person's tax return. That uncoordinated process gives rise to the scope for a duplication of work by HMRC which can only increase compliance costs for taxpayers and HMRC. It might mean that some employees might need to complete tax returns where this might previously not have been required."

Mr Franklin warned that HMRC's intention to probe the effectiveness of valuation checks on the main tax-approved share schemes could deter some companies from issuing share awards: "This lack of certainty could have a negative effect by discouraging equity incentives in some unquoted companies. Some companies might prefer the certainty and ease of calculation that payments in cash give causing them to make fewer awards of shares. While that might reduce the workload of HMRC in this area, to some extent, that would be a bad unintended consequence and would damage the UK economy, as it would weaken one of the key instruments (share based incentives) that help promote growth in unquoted companies and through that the wider economy.

"HMRC should withdraw its proposals and start a full consultation before pushing through a change which will be damaging to HMRC and the country in the long term," he said.

The Centre has asked for a meeting on the topic. HMRC has offered to host a goodwill visit to SAV in Nottingham.

Major EU data protection reform in businesses

Following four years of negotiation, agreement has been reached between the various EU institutions (the Commission, the Council and the EU Parliament) on reform of data protection laws to be applicable across all EU member states, applicable from 2018. At present, although the existing directive of 1995 requires all member states to have provisions for the protection of personal data, this is not particularly prescriptive and it was left to each state to legislate as it felt appropriate. Consequently, data protection laws differ widely across the EU. The new General Data Protection Regulation aims to address this and will comprise one set of laws applicable uniformly across all member states.

The new regulation must now be ratified by the EU Parliament – a move expected this month, said Centre member **Abbiss Cadres** of the **Celia Alliance**. The key provisions of the agreed draft to be aware of are:

*Breaches of protection (for example, by hacking) must be reported immediately to the regulatory authority in each country

*The steps taken by a company to comply with the Regulation must be documented, *Businesses handling significant amounts of sensitive personal data, or which monitor consumer behaviour, will be required to appoint a dedicated data protection officer *The right to be forgotten – for personal data to be deleted either when it is no longer current or on request of the data subject

*The right to data portability across service providers.

Companies based outside the EU must comply with the Regulations when offering services within the EU.

The agreed draft contains a tighter definition of consent than is currently contained in the UK Data Protection Act 1998. Any consent to the processing of personal or sensitive personal data in the UK must be freely given, specific, informed and unambiguous once the new Regulations are in force. The requirement that consent be freely given is likely to be difficult to achieve in an employment context as noted by previous guidance from the Information Commissioner's Office on this topic. Enforcement will change significantly and become a far greater business risk as under the new regime fines of up to four percent of turnover may be imposed for breaches.

Centre chairman Malcolm Hurlston commented, after visiting the Information Commission in

Wilmslow last week, "This is a regulation but not a regulation as we know it. Member states retain commendable flexibility. "

Japan – Data protection:
Amendments to the Act of the Protection of Personal Information (the Act) were passed by the Japanese parliament in September 2015 and are due to come into force by September 2017. Although there is a long lead time and further details are expected to be released, companies doing business in Japan should start now to ensure that their data privacy policies and personal data procedures will comply with the Act. The definition of 'personal information' is extended to include biometric data and identifying numbers (such as passport and membership numbers). Sensitive information (which includes race, medical history and criminal history) is subject to stricter controls and cannot be collected without the subject's prior consent. It is also subject to more severe restrictions on disclosure to third parties. However, depersonalised information (where identifying features have been removed) can generally be transferred without permission. The government is due to establish a Personal Information Protection Committee in early 2016. This Committee will have the authority to investigate data collection and protection practices, including on-site inspections. Disclosure of personal data to third parties, or changes to the proposed use of personal data, will require a report to the Committee. The report will become public information and is likely to be made available online. The provider and recipient of the data must keep records of the transfer. A data controller may not transfer personal data to a separate legal entity outside Japan (including a group company), without first obtaining the data subject's consent or complying with the pre-amendment Act. In addition, either the foreign jurisdiction or the recipient entity must have a data protection regime that meets the standards approved by the Committee. The Act will apply to businesses outside Japan that collect personal data in the course of supplying goods and services to Japan. The theft or transfer of a personal information database for gain will constitute a crime. Penalties of up to one year in prison or a fine of JPY500,000 may be imposed on companies and current and former employees. The exemption for companies who handle personal information for under 5,000 individuals is removed. The Act will now cover all companies that deal with personal data.

PAYE coming to France
France will finally get a PAYE tax withholding system for employment income from January 1 2018. Income tax is currently assessed on the basis of individual tax returns and paid by employees directly on an annual basis. Details of the new system have not yet been released, in particular how income for the 2017 year will be taxed and guidance on that is expected early next year. The PAYE tax will be implemented gradually and it will be collected and processed by employers through payroll, as is currently the case with social security contributions. Individuals will still be required to file annual tax returns. However, France is to bring in a system of compulsory electronic filing of the annual tax return and the payment of income tax. The system will be phased in over a four-year period with different income bands being included each year so that by 2019 the electronic filing and payment obligation will apply to all taxpayers.

HMRC warns pay consultants on Bonuses
HMRC has warned companies and their reward consultants that employee bonus schemes, based on contracts for difference, should be taxed as employment income and subject to PAYE, said Centre member **Deloitte**. The warning came in an HMRC bulletin *Spotlight 28: Employee Bonus Schemes - Growth Securities Ownership Plan and other avoidance schemes based on contracts for difference*. HMRC said it was aware of a number of tax avoidance schemes, based on contracts for difference, being used by some businesses to provide tax free or tax reduced rewards to their employees. One such was known as the *Growth Securities Ownership Plan*. According to the promoters of the schemes, any payment made to the employee by the employer on the maturity of the contract for difference is taxable as a capital gain, at a top rate of 28 percent, rather than as employment income. "HMRC has reviewed a number of contracts for difference and Growth Securities Ownership Plan schemes," said Deloitte. "In its view, the schemes do not work and any payments made by an employer to an employee on the maturity of the contract for difference should be taxed as employment income and subject to PAYE income tax and employer and employee NICs." See http://deloi.tt/1PUxsVw

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