Vol 28 No 6 **November 2014**

it's our business

newspad of the Employee Share Ownership Centre

Glittering prizes at the Centre 2014 Awards & Dinner

The **Esop Centre's** highlight of the year - the **Awards Reception & Dinner**, sponsored by **Elian* -** took place at the **RAF Club** in Piccadilly W1 on **October 30.**

The champagne reception and black-tie dinner among heroic memories of the finest hour brought together more than one hundred Centre members and guests – representing UK and international plan issuer companies and their employee equity advisers – to recognise the world best in employee share ownership.

Young Journalist of the Year and controversial advocate of her generation **Katie Morley,** of the Daily Telegraph, presented the awards with **Mick McAteer** chairman of the EU Financial Services User Group – as joint Guests of Honour.

Introducing the awards, Centre chairman Malcolm Hurlston CBE warmly thanked all who entered, and the judges for their efforts in deciding the winners. Choosing between many hard to separate entries were Robert Head of Pearsons and Damian Carnell of Towers Watson.

The headline award this year was taken by **Shell** (nominated by Computershare), *for the best international all-employee share plan in a company with more than 1,500 employees in at least three countries*. The standout part of its submission detailed how it successfully rolled out its employee share plan to China. Negotiating the minefield of regulation was an incredible challenge and, for gaining the necessary state approval, Shell emerged victorious. The judges particularly liked Shell's use of Chinese proverbs in its submission and Mr Hurlston quoted: "The person who says it cannot be done should not interrupt the person doing it."

BT received a *special award* in light of this year's phenomenal news: its £1.1bn sharesave payout. In announcing the award Mr Hurlston said "Even more important than the size of the payout was the fact that 60 per cent of BT's employees are now shareholders. They don't take the money and run; they take some of the money (and who wouldn't) and stay."

Not only were industry defining achievements awarded, but individual efforts too. This year's *Esop Institute student of the year* winner, **Andrew Sumner** at YBS, raised the bar for achievement in this category; for the first time the award went to someone who doesn't work in share schemes. "He paid his own way, spent his own time and came out on top" said Mr Hurlston.

The *best all-employee share plan communications* award recognised best practice. This was a crowded category, from which three finalists were selected: SSE, BskyB, Rio Tinto. **Rio Tinto** was selected as the winner, with a special mention of its global share plan telephone support: 24hrs a day and in 13 languages. BskyB had clearly used its media expertise in designing polished communications materials.

The achievements of employee share ownership are not restricted to global firms, and the *best all-employee share plan in a company with fewer than 1,500 employees* award recognises the contribution smaller firms make to spreading the wages of capital. This year's winner was **Conviviality** (nominated by Capita), the judges particularly liked the way its share plan was tailored to the company; it had chosen to protect employee shares by limiting dilution through share issues to franchisees.

Also announced at the dinner was a **new award**, to be granted for the first time next year, *for the best intervention by a major company chairman or ceo* – either in the annual report or in national media. We shall be looking out for contenders, and welcome

From the Chairman

Employee ownership for the millions was celebrated at our awards dinner last Thursday and now we have the chance to take it further. Our guest speakers Mick McAteer and Katie Morley pointed to two of the key financial problems of our times: inequality and long term provision. For both employee share ownership has at least part of the answer. So now is the time to deepen our understanding, find new approaches and place our all-employee knowledge at the service of the future.

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

suggestions – self nominated or otherwise. As with the 2014 award for the best all-employee use of Shares for Rights, there will not necessarily be a winner.

***Elian:** *Following its management buyout of Ogier Fiduciary Services, it is changing a lot more than its name. As specialists in share plans, retirement, savings and deferred bonus plans, Elian is setting new industry standards by challenging standard practice. From technical skills and market understanding to client service and expert advice, it is relentless in its pursuit of excellence. Elian Performance & Reward Management's specialist share awards team provides best-practice guidance and plan-specific practical assistance on technical matters. It sets the standard in on-going trustee and administration services. From project managing the plan implementation to assisting in the practical design of the arrangement, it equip its clients with best-of-breed solutions customised to meet every requirement. Elian's market-leading, innovative and flexible share plan administration and reporting system means it can create a bespoke solution to suit each and every client. The system enables participants to have real time 24/7 access to their share plan information, initiate transactions and model their financial position. Company co-ordinators have the freedom to present data to stakeholders in a manner that suits them.*

For further information please contact:
Tania Bearryman T: +44 1534 753936
E: tania.bearryman@elian.com

Centre workshop for European Commission

Preparations are advanced for the Centre-organised international employee share ownership workshop, which will take place at **Linklaters** in Silk Street London EC2 on **Friday November 28.**

The seminar and workshop, to be chaired and introduced by **Malcolm Hurlston CBE**, is part of a European Commission-backed project aimed at evaluating the role of employee financial participation (eso) in boosting economic growth within the EU – and how that role could be developed within local and regional economies.

David Gorman of Capital for Colleagues; **Martyn Drake** of **Computershare; David Craddock** of the **David Craddock Consultancy Services; William Franklin** of **Pett, Franklin & Co**; **Graeme Nuttall OBE** of **Fieldfisher** and **Catherine Gannon** of **Gannons** will be the key UK speakers at this event.

Speakers from the European mainland will include: **Marco Cilento,** of the giant Italian trade union, **CSIL; Davide del Maso** of the business support consultancy **Avanzi, Marina Monaco** of the **European Trade Union Confederation (ETUC)**; **Mariano Fandos,** of the French professional employees trade union, **CFDT** and **Francesc Abad**, of the Spanish employee-owned SME business association, **Confesal.**

Agenda topics include: employee-owned businesses in the SME sector; public service mutuals; community shares and social investment; employee engagement through Eso in multinational companies; evidence of the esop impact on economic growth; business succession in France; the spread of employee financial participation in German company and Spain.

The Centre can offer a limited number of free day delegate places to members on a *first-come-first-served basis* for this all-day event. Those interested in attending should contact either Jacob Boult – jboult@esopcentre.com or Juliet Wigzell – jwigzell@esopcentre.com

Other workshops under this project have taken place in recent months in Milan and Florence, following an initial meeting last March in Brussels, attended by the Centre chairman and international director Fred Hackworth. The Centre is the Commission's lead UK partner in the employee ownership.

Equiniti takes over public service mutual MyCSP

The showcase public service mutual company **MyCSP**, formerly the civil servants' pensions division of the Civil Service, is now in private sector hands, following a low profile and unexpected £8m share sale by the government.

Equiniti and MyCSP employees – as the other major shareholders in the mutual- had first to agree to the sale by the Cabinet Office of almost one third of its previous 35 percent stake in MyCSP - to Centre member Equiniti.

Following the government's share sale – equivalent to 11 percent of MyCSP's total equity – Equiniti now holds a majority 51 percent of the shares, while employees retain their 25 percent share and the Government keeps a reduced stake of 24 percent.

The change in ownership structure comes despite a pledge just two and a half years ago that the original deal to run My Civil Service Pension (MyCSP) between the three shareholders – Equiniti, the government and an employee trust – would hold for at least five years without any changes.

A MyCSP spokesman told *newspad* that Equiniti had been sold a majority stake in the company.. "To ensure the continued development of MyCSP, increase the pace of growth and extend the partnership's commitment for another five years."

MyCSP denied that Cabinet minister Francis Maude had been the prime mover in the sale. "As a partnership, the decision was taken by all three shareholders including the Employee Benefit Trust, in consultation with the board of directors," said the spokesman.

He confirmed that the 11 percent stake in the company sold by the government realised £8m for the Treasury: "Equiniti paid a premium on the original value of MyCSP based on its performance over the past 36 months," he added.

The **Public & Commercial Services Union** (PCSU) reacted angrily to news of the share sale. It asked: "How can anyone have any faith in this, given the previous agreement has been torn up?" PCS general secretary Mark Serwotka said: "This vindicates everything we have said about Francis Maude's political obsession with mutuals that, while small in scope, is simply an attempt to privatise by the back door. There is nothing mutual or co-operative about forcing employees out of the civil service and into the arms of a private firm that is then allowed to swallow up more and more of the business.

"MyCSP and the government have ridden roughshod over the agreement to maintain ownership levels and no one now can have any faith in their professed commitment for the coming years," added Mr Serwotka.

MyCSP was the Government's first mutual joint venture and was established in 2012 to provide pension services to 1.5m members of the Civil Service pension scheme in 250 departments and sub-sections of Whitehall, processing payments totalling £4bn a year. Last July it reported a 31 percent increase in turnover to £42.1m for the 2013/14 financial year. This followed a two year programme of investment in the transformation of technology, operations, service, and culture which has been delivered by MyCSP and its employee shareholders using investment and expertise from Equiniti.

"This will strengthen the partnership and help to accelerate the growth of the business in the interests of its clients, shareholders and employees," according to the magazine *Pensions World.*

Nicky Hurst, chief executive, MyCSP, said: "This is great news for MyCSP and its stakeholders and reinforces our on-going commitment to our mutual partnership. The sale will enhance our ability to continue to build MyCSP into a business that can meet and benefit from the pension reform changes in 2015 in addition to growing our client base and expanding the range of services that we offer."

Mark Lund, chairman of MyCSP Trust, said: "MyCSP's employee partners have played a crucial role in transforming the business and have benefited greatly from the expertise of Equiniti. We are delighted that all shareholders have committed to extending our mutual partnership and to develop it further for the collective benefit of all stakeholders."

Guy Wakeley, ceo of Equiniti and non-executive director of MyCSP, said: "We are delighted to increase our investment in MyCSP further cementing our partnership with the Government's flagship mutual. The MyCSP team has made incredible progress in enhancing service delivery, increasing employee productivity, and growing profitability, while delivering cost benefits for taxpayers and rewards for employees. This demonstrates the success that can be achieved by working together and using the best of public and private sector expertise to transform public sector services."

MyCSP, which administers civil service pensions, was previously part of the civil service but was persuaded to become a mutual under a plan led by Mr Maude. It met with opposition from staff who took industrial action to try to prevent the handover, citing fears it was a step towards privatisation.

The original stakes in this share ownership model were; Equiniti 40 percent; the state (taxpayers) 35 percent and the employees (ex civil servants) 25 percent.

A recent memo issued to staff – in order to explain the *volte face* - stated the shareholders agreed to a "five year lock-in, restricting the selling of shares in MyCSP in order to ensure stability of the business and reinforce commitment to our mutual partnership model". It added: "As part of this sale, the three shareholders have agreed to re-start the lock-in for another five years, preserving the identity, ethos and governance of MyCSP and reinforcing all the partners' commitment to our mutual joint venture in to the future and beyond what we originally envisaged."

PCSU added: "The only other civil service mutual is the Cabinet Office's behavioural insights team – the so-called 'nudge unit' that only employs a handful of staff. A survey by the respected Civil Service World newspaper at the height of Mr Maude's initial push to enforce the policy found that only 16 percent of civil servants had any interest in even exploring the idea of forming a mutual."

Supermarket SAYEs under water

The plummeting value of **Tesco** shares has disappointed many thousands of staff who have been saving in Tesco share schemes. The supermarket's fortunes have been turned on their head over the past five years. In 2009, Tesco was booming. Around 52,000 of its staff shared a windfall of £126m as a result of paying into its Save as You Earn (SAYE) share scheme to cash in on their discounted Tesco option price share purchases. Employees who had been in the five-year scheme received an 88 percent return on their money – a big incentive to take advantage of the scheme again. However, those who did so will be left frustrated this year. The retail giant's share price has fallen by 55 percent over the past three years, and slightly more over five years. This means anyone saving into a three or five-year SAYE scheme maturing in 2014 will get a zero return on their savings Over the past three years, compared to the retail prices index (RPI), the spending power of £100 has shrunk to £92.50. Over the past five years, the spending power of £100 has reduced to £83.77, when compared with RPI inflation, according to calculations by broker Charles Stanley.

Tesco is among several large UK firms whose staff will have failed to make any money from their maturing share schemes this year. Tens of thousands of employees at **Morrisons** and **Sainsbury's** are in the same boat. Like Tesco, these supermarkets' share prices have been badly hit by their customers defecting to discount stores **Aldi** and **Lidl** to save

money on food bills. Their tumbling share prices will have a knock-on effect for staff who have money invested in their shares, as Morrisons shares have fallen by 47 percent over the past three years, while Sainsbury's shares have dropped 21 percent.

However, overall gains made by UK employee participants in SAYE schemes have more than doubled annually, boosting the average to £4,142.85 over the past year, compared with £2,250 in 2011/12, according to Centre member law firm **Pinsent Masons.**

Employees at the industrial equipment firm **Ashtead Group** who have been paying into its three-year SAYE scheme (maturing this year) would have turned every £100 they saved into £603. **EasyJet** and **ITV** SAYE savers are pleased too, as they have turned every £100 into £293 and £227 respectively over the past three years.

Winning Schemes:

rank	FTSE100 firms	3-year return (percent)
1	Ashtead Group	602.80
2	EasyJet	292.90
3	ITV	226.52
4	Sports Direct Intl	190.71
5	Persimmon	177.32
6	Whitbread	149.01
7	TUI Travel	138.90
8	London Stock Exchange Group	137.32
9	Prudential	134.35
10	Legal & General	122.53

Under SAYE, employers offer qualifying employees the opportunity to save up to £500 a month for three or five years, which is deducted from pay each month and thus not subject to either Income Tax or NICs. If employees choose to buy shares at the savings contract maturity, they then have to decide when to sell them. When they do, they could be charged capital gains tax (CGT) on any gains made, but the CGT exemption of up to £11,000 a year means that most SAYE scheme participants don't pay this tax.

ESV would be no picnic, warns Centre

Chairman Malcolm Hurlston CBE has told the government that the Centre has many doubts about the proposal to create a new alternative – the Employee Shareholding Vehicle (ESV) – to the tried and tested employee benefit trust (EBT).

In a letter to the Treasury personal tax team re the ESV public consultation exercise, Mr Hurlston warned that the proposed ESV may be "the wrong answer to the question it poses."

"The main concern of our members is that the creation of an ESV with the features proposed would not deliver the simplification that the Office of Tax Simplification (OTS) sought to identify and may in reality introduce more uncertainty, complexity and cost," he wrote.

"The OTS has no stronger supporter than the Centre. Historically we have been influenced by the QUEST (a new vehicle exploited with great loss to the exchequer) and Roadchef (an example of dangerous conflict in a UK trust).

"More recently the effectiveness of Disguised Remuneration measures and the introduction of the OECD Common Reporting Standard have changed the compliance landscape.

"The interests of employees, as trust beneficiaries, get too short shrift in the proposal. There are better ways of achieving the objectives for the relatively small number of companies who might benefit without stripping away the protections afforded to all by the current framework.

"The ESOP Centre called for tax simplification at the outset of the Coalition government and its members strongly support the work of the OTS and its aims of seeking to remove complexity from tax legislation to benefit a wider audience, in particular through all-employee schemes. However, the proposal for an Employee Shareholder Vehicle (ESV), as set out in the OTS review of unapproved employee share schemes has aroused concern among members," he added.

The OTS Review describes the difficulties associated with establishing and operating an Employees Trust but focuses on a certain type of company in specific circumstances, largely private and closely held companies.

"It ignores the fact that the use of an Employees Trust in its current form is regarded as best practice by the vast majority of participants in the employee share plan world," said Mr Hurlston. "While the ESOP Centre is fully committed to promoting the extension of employee share ownership to the wider community and removing unnecessary or costly barriers to large and small companies alike, it would hesitate to support sweeping changes which would be certain to result in significant consequences and costs for companies engaged in Eso for the benefit of a small minority of companies in specific circumstances, unless it were established beyond doubt that the demand justified the hazard. Although the Centre has a broad membership, it has no evidence of such demand.

"Some of the recommendations would reduce the complexity for private and close companies, specifically in relation to their funding of an Employees Trust and the costly advice required around IHT. This would be welcome. However, we see no need to establish a new untested vehicle to make it happen," he said.

"The OTS Review is largely silent about the interests of employees: our concern is to ensure that decisions continue to be taken and trust assets managed in an appropriately regulated environment with the interests of trust beneficiaries at their heart. The proposed ESV would allow scheme advisers or company directors, among others, to act in a dual capacity as trustee of the ESV, with a potential for obvious conflicts of interest.

"Of course the vast majority of companies with share plans are committed to doing the right thing and will continue to do so. But there are cases where the wishes of the company operating the plan and the best interests of the beneficiaries may not always be aligned. It is therefore of crucial importance that the true independence of the trustee be maintained to safeguard the interests of employees whenever shares are held in an Employees Trust.

"This is not provided for in the OTS recommendations. Indeed the review focuses heavily on the costs and complexities for the company but makes no mention of safeguards for the employee," he added.

The success of the proposed ESV also relies on reducing avoidance through a new set of rules, said Centre experts. However, experience shows that new rules, however carefully drafted, create new scope for mischief or misuse or innocent non-compliance through lack of experience or understanding.

"A new untested vehicle could be a hazard to the collection of UK taxes which may take years to identify and address," warned Mr Hurlston.

"The creation of the ESV as proposed would in effect deregulate the trusteeship of Employees Trusts. It would fragment the function of trusteeship with no concentration of expertise and complicate regulation. This is not something the ESOP Centre could support since it would be likely to have damaging repercussions for employee ownership and for the wider economy without having any uplift in receipts for the Exchequer, since the proposed ESV is not changing the taxation of an Employees Trust from the situation that prevails today.

"Indeed the creation of the proposed ESV is more than likely to result in lower receipts owing to unintentional noncompliance with tax rules or even opportunities for abuse in the uncharted territory created by new rules and a potential new vehicle.

The ESOP Centre is convinced that there are more straightforward ways of alleviating some of the difficulties experienced by smaller private companies and close companies which want to extend employee ownership. The Centre invites your officials to meet with us to discuss further thoughts."

Among Centre members with different views were Graeme Nuttall of **Fieldfisher** and David Pett of **Pett, Franklin & Co**.

Mr Nuttall said: " Fieldfisher welcomes the proposal for an ESV to solve long-standing technical issues with the warehousing and market making of shares for use in employee share plans – An ESV will complement these reforms by making it easier (and less costly) for companies to enable employees to acquire and sell shares under ESPs.

"This response to the consultation supports the ESV proposal to solve these issues and highlights the opportunity it presents in particular: (a) to create an onshore capital gains tax efficient alternative to an offshore employee benefit trust; (b) provide a solution to the loan participator charges that can arise when making a loan to a trust; and (c) to add another governance vehicle into employee ownership structures (provided the ESV can receive dividends and exercise votes)

"We believe the ESV must be flexible enough to form part of a direct employee ownership structure, as well as support minority employee share ownership," he said. "The ESV will provide solutions to long-standing tax technical issues and also achieve a major practical change – providing an onshore solution that will not be treated with the suspicion and concern that some employees have about existing offshore trust solutions.

David Pett said: The idea of a 'safe harbour trust' was first put forward in response to the practical difficulties met by smaller unquoted companies, particularly those which are 'closely held', in structuring share-based incentives for employees. The problems were particularly acute for those companies whose shareholders do not wish to sell or 'float' the company. He argued that the creation of such a new trust structure would not really be necessary if the Treasury finally agreed to abolish crippling actual or potential tax charges on: *Company share buy-backs of pooled shares *Loans to finance the employee trust, which could allow it to become self-financing through share purchases *An exemption from stamp duty on purchases and sales of shares by an employees' trust would be helpful as it would reduce the costs of operating an employee share scheme and remove the anomaly of the distinction between the use of existing, and new-issue, shares for such purposes."

Mr Pett added: "Without a clear, unambiguous and all -embracing statutory exemption from CGT on a disposal of shares by a UK resident employees' trust to an employee beneficiary and the removal of any possibility of *double taxation*, it is hardly surprising that companies are advised to establish their employee trusts offshore, outside the scope of the charge to UK capital gains tax to the point where we would be negligent not to advise them to set up offshore. It is a mystery to us why the government has for so long failed to take this simple step and thereby actively promote the repatriation of the employee-trustee services industry!). It is perhaps worth restating that the principal reason why employee trusts are established offshore is not to avoid tax, but to safeguard against double taxation."

He added: "We do not understand HMRC's long-held view that a company controlled by an employees' trust that happens (to protect trustees against unlimited personal liability) to have a single corporate trustee cannot establish a tax-advantaged scheme. We would have thought it not unreasonable for HMRC to accept that the independence test should be applied on a 'look through' basis. We see no reason of policy why the changes recently enacted to allow tax-advantages to be established by

companies controlled by an EOT should not be extended to companies controlled by any form of employees' trust."

The Centre thanks those senior members – including trustees and others – who assisted in the preparation of this response to the consultation.

Free SIP shares award

Premier Foods, Britain's largest food producer, which counts West Country firm Ambrosia, Sharwoods and Oxo among its brands, is to reward all 4,000 of its UK staff with free shares under its all-employee Share Incentive Plan (SIP). Premier Foods ceo, Gavin Darby said: "As we embark on the next stage of our strategy to drive growth, this share plan will help focus the organisation and enable employees to share in our long-term success." HMRC figures published in June showed that 820 companies in the UK are offering their employees participation in a SIP.

Virgin Money had planned to give each of its 2,800 staff shares worth £1,000, which they could sell after one year, before turbulent stock markets forced the company to postpone its IPO. The UK government, plus almost 3,000 Virgin Money staff and entrepreneur Richard Branson would have shared a multi-million pound windfall had the challenger bank listed in London in the coming weeks. Virgin Money intended to raise £150m from a stock market listing and then pay £50m to the UK Treasury, under the terms of its purchase of nationalised lender Northern Rock in 2011. Branson, one of Britain's best known businessmen, founded Virgin as a record company in 1970 and has since expanded into airlines, telecoms and space travel. He will sell part of his stake in the offer, but Virgin declined to say how much. Analysts estimated Virgin Money would be valued at between £1.5bn and £2bn in a flotation, potentially valuing Branson's stake at almost £1 bn.

Centre's Budget plea

Centre chairman Malcolm Hurlston CBE and senior members will appeal to Chancellor George Osborne to use his last Budget of this parliament to being in measures to support the neglected Company Share Option Plan (CSOP).

Michael Landon, executive compensation director at MM & K, said: "The CSOP is a simple and flexible tax-advantaged share scheme, which is ideal for rewarding both managers and lower-paid employees in small companies which do not qualify for granting Enterprise Management Incentive (EMI) options. Many smaller companies find it difficult to introduce either of the tax-advantaged all-employee share plans – SAYE and SIP – because of the complexity of the legislation for these plans and the high administration costs.

"CSOPs have many fewer requirements and so can be governed by a very simple set of rules and can be easily administered. Unfortunately the CSOP legislation, first introduced in 1984, has not been adapted to meet modern remuneration practice. Most companies nowadays prefer to grant Long-Term Incentive Plan awards over the full value of shares, whilst the exercise price of a CSOP option must not be less than the market value of a share at the date of grant.

"By contrast EMI options, first introduced in 2000, allow options to be granted with a discounted – or even zero - exercise price. As for CSOPs, income tax relief is only given in respect of any increase in the value of the shares over their market value on the date of grant," added Mr Landon.

HMRC statistics show that the number of participants granted CSOP options has fallen from a peak of 415,000 in 2000-01 down to only 25,000 in 2012-13. This is largely due to the trend in practice away from market-value share options.

"These numbers have not been compensated for by participation in all-employee share plans," said Mr Landon. "Whilst roughly one million employees participated in each of SAYE and Profit Sharing Share Schemes (now replaced by SIP) in 2000-01, by 2012-13 participation in SAYE and SIP had fallen to about 400,000 for each plan. These plans are predominantly operated by the largest companies.

"We consider that the best way to encourage employee share ownership in smaller companies (which do not qualify for EMI) would be to relax the requirements of the CSOP in a similar way to that recommended in the report of the Office of Tax Simplification (OTS) in its Review of Tax-Advantaged Share Schemes, published in March 2012 http://tinyurl.com/n99a58q

In particular, the OTS report recommended (effectively for CSOP):

*Allow the exercise price to be at a discount or at nil cost (while keeping the income tax relief only for increase over the market value at grant).

*Remove the three-year holding period before exercise with income tax relief.

*Consequential removal of all leaver and other early exercise requirements.

*Replace existing £30,000 limit for all subsisting options with a rolling three-year £30,000 limit.

Mr Landon believes that the additional cost in income tax relief of these measures would be relatively low. However, the extra flexibility for design of CSOPs and simplicity of administration could substantially boost the levels of employee share participation, in particular in smaller companies.

Mr Hurlston said: "I am keen to concentrate Centre firepower this year on the CSOP. In addition I plan to stress the need for the government to publicise the CSOP and its potential for reaching part timers and the low paid. Options are part of the answer to the inequality question which troubles many policymakers and economists as well as the bulk of the thinking population."

On the move

Solium Capital, the leading global provider of software-as-service for share plan administration,

financial reporting and compliance, is expanding its operations with the opening of a new office in Paris. **Brian Craig**, Solium md, UK & EMEA, said: "We are delighted to announce our presence in Paris and the new office marks an important milestone for Solium's strategic expansion into Europe and as a global company. The team's objective will be to meet growing demand for companies, especially, in France, Germany and Benelux, who want to simplify the complexities of their share plan administration." Located in Paris' business district La Défense, the operation is led by Bastien Martins da Torre, director of corporate solutions Europe, who has more than 15 years of experience in the European technology and software industries. From its operation centres in the Canada, the US, the UK, Australia, Spain and France, this Centre member's innovative software-as -a-service (SaaS) technology powers share plan administration for more than 3,000 corporate clients with employee participants in more than 150 countries.

Popular Centre conference speaker and participant in the trailblazing NY2014, **Joe Saburn,** has landed on his feet. His new US legal employer is Fisher Broyles LLP; website at www.FisherBroyles.com. His e-address is: joseph.saburn@fisherbroyles.com

CONFERENCES

DAVOS: Feb 5 & 6 (2015)

International oil and gas services giant **Petrofac,** an **FTSE100** constituent which employs 18,000 staff worldwide, is the latest member to register for the Centre's **16th Global Employee Equity Forum,** which takes place at the **Hotel Seehof,** in **Davos Dorf,** on **Thursday February 5** and **Friday February 6** next year.

Our three Davos e-brochure logo sponsorships have been claimed by **Appleby Global**, **Bedell Group** and **Elian** (formerly Ogier Fiduciary)**:**

Appleby *is one of the world's largest providers of offshore legal, fiduciary and administration services. With over 800 lawyers and professional specialists across the Group, operating from 12 offices around the globe. Appleby advises global public and private companies, financial institutions, and high net worth individuals, working with them and their advisers to achieve practical solutions, whether in a single location or across multiple jurisdictions. Review the website at: www.applebyglobal.co and contact: Patrick Jones, partner, Appleby* Trust (Jersey) Ltd. Tel: +44 (0) 1534 818390

Bedell *is a leading provider of legal and fiduciary services with more than 300 partners and staff in key financial centres including Jersey, Guernsey, London, Dublin, Geneva, Mauritius, BVI and Singapore. Its offshore law firm, Bedell Cristin offers comprehensive Channel Islands, Mauritian and BVI legal advice. Its trust company, Bedell Trust, has been providing fiduciary and administration services offshore and onshore since 1971. Experience and commitment to excellence have earned Bedell a strong client list of world class institutions, corporates, high net worth individuals and intermediaries. Contact: Grant Barbour, Partner, Bedell Group* +44 (0) 1534 814627 *grant.barbour@bedellgroup.com*

Following a management buyout of Ogier Fiduciary Services, **Elian** *is changing a lot more than its name. As a specialist in share plans, retirement, savings and deferred bonus, Elian is setting new industry standards by challenging standard practice. Whatever the size of the business, wherever the jurisdiction, however complex the structure required, Elian delivers. Its market-leading, innovative and flexible plan administration and reporting systems means it can create a bespoke solution to suit each and every client. From technical skills and market understanding to client service and expert advice, it is relentless in its pursuit of excellence. For further information please contact Tania Bearryman, group director +44 1534 753936, tania.bearryman@elian.com*

More than a dozen speakers have confirmed their presentation topics for Davos and only two speaker slots remain to be filled. Among the programme highlights will be a share plan case study to be given by **Tony Llewellyn** and **Charlotte Caulfield** from FTSE 250 company, **Imagination Technologies**. The key issue is how a high technology company, dedicated to employee share ownership, copes with a very volatile share price. Another slot to watch will be **Fred Whittlesey** of **Compensation Venture Group** who will reveal latest US executive reward trends and to what extent performance pay rules the roost in corporate US today. The increased regulation being faced by EBT trustees will come under the spotlight in a joint presentation delivered by **Katherine Neal** of **Ogier Legal** and **Donna Laverty** of **Elian.** They will discuss: **Employee benefit trusts - are current structures being undermined?** (*New challenges for offshore trusts – with case studies*) Other speakers include: **Alan Judes** of **Strategic Remuneration; Jeremy Mindell** of **Primondell; Justin Cooper** of **Capita Asset Services; Mike Baker & Kevin Lim** of **Solium; David Pett** of **Pett, Franklin & Co. Shervin Binesh** of **Western Union, Euan Fergusson** of **White & Case** and **Alasdair Friend** of **Baker & McKenzie. Paul Anderson of Bedell Group** will chair the trustee panel session.

Prospective speakers should contact Centre international director Fred Hackworth asap to discuss the two available slots. Our new host, the four star Hotel Seehof is less than 100 metres from the Parsenn funicular and ski lifts. The Seehof boasts a Michelin starred restaurant. The move to the Seehof has enabled the Centre to keep to 2014 attendance prices for next year, while the standard of facilities and hospitality that members have come to expect from Davos is being maintained.The Davos accommodation and conference package deal fees, on

which *no sales tax is payable,* are:

Speakers

Service providers GBP **955** Plan issuers GBP **695**

Centre member delegates

Service providers GBP **1,150** Plan issuers GBP **765**

Non-member delegates

Service providers GBP **1,495** Plan Issuers GBP **795**

The Davos 2015 package includes two nights' accommodation (February 4 & 5), with breakfasts and lunches provided, in the Hotel Seehof (www.seehofdavos.ch) plus admission to all conference sessions, the annual cocktail party and a bound delegate handbook. There will be an optional pre-conference informal delegates' dinner in a Davos restaurant on Wednesday evening. Contact Fred to register – either as a speaker or as a delegate - at: fhackworth@esopcentre.com.

Centre-STEP Guernsey conference October 3

This year's Centre/Society of Trust & Estate Practitioners (STEP) Guernsey joint share schemes seminar took place in the St Pierre Park Hotel on October 3. Centre chairman **Malcolm Hurlston CBE** who chaired the event, congratulated the island on its intergovernmental agreements reached in the past year with the UK and the US. It was time, he told delegates, for the UK government to take a British Isles approach to the share scheme world and for the Islands to bin 'on-shore and off-shore' distinctions.

David Craddock, representing his eponymously named company, highlighted the flexibility of employee share ownership (eso) in addressing different commercial challenges. David set out, through the pioneering example of Louis Kelso, how the trust mechanism can be used to overcome the problem of succession planning. In demonstrating the flexibility of eso, David showed how it can serve to initiate corporate rescues through the introduction of a remuneration mix. He detailed the capacity of eso to provide corporate glue and introduce an alignment of interest between employee and shareholder via the share price. **Mike Landon** of **MM&K** and **Andy Cooper** of **RBC Wealth Management** delivered a joint presentation on the funding options for share and share option awards. Mike ran through the opportunities and risks associated with the timing of share plan funding. He noted that most companies operate a policy of combining up front funding with funding at the time of vesting, to mitigate against the risks of share price fluctuation. Mike covered the advantages and disadvantages of funding share awards by issuing new shares, or through the use of treasury shares. He emphasised that funding share and share option awards is a two part problem; a problem of timing – *when* best to buy shares, and a question of *how* to fund a scheme. Andy Cooper highlighted hedging options available to trusts in addressing market timing problems – the issue of when to buy shares. He outlined three strategies for hedging against the risks associated with exposure to a fluctuating share price. He explored the potential of each of the three strategies: look-back notes, call options and mini-futures. **Stephen Woodhouse** of **Pett, Franklin & Co.** discussed the government consultations on the proposed new employee shareholding vehicle (ESV), marketable securities, and internationally mobile employees. Stephen's presentation led to much discussion. He encouraged delegates to look at the potential opportunities a new ESV could bring for Channel Island trustees, instead of seeing the proposed change as a threat. He pointed out that the jurisdictions of the Crown Dependencies are centres of expertise in the administration of trusts and that there would be nothing stopping Guernsey or Jersey trust companies from administering an ESV incorporated on the mainland. The possible introduction of a new ESV should be seen as an opportunity, he added. **Graham Muir** from **Nabarro** then took the floor to discuss the new employee ownership trust. This new trust vehicle, with its origins in the *Nuttall Review*, has several qualifying requirements – set out in Graham's presentation. He discussed the disqualifying events which lead to the revocation of tax relief. The legislation governing its use is extensive. Perhaps this complexity partly explains the comparative lack of interest in using the vehicle to date, delegates suggested. **Alison MacKrill** representing **Carey Olsen** and **STEP Guernsey**, gave a legal update for trustees who work in the employee equity and/or wealth management sectors. Through the use of recent case law, Alison took us through those changes which affect the day to day decisions of trustees. She focused on Foreign Account Tax Compliance Act (FATCA) and the recent inter-governmental agreements (IGAs), including both UK -US and Guernsey-US examples. She emphasised that the time to ensure compliance is now. For those seeking guidance, both the **States of Guernsey** website, and the briefing notes on the Carey Olsen website were good sources, she added. She updated delegates on the Roadchef case and illustrated the importance of which country's law applied.

The Centre would like to thank all those who attended and in particular the expert speakers. We hope to make next year's Guernsey event an even more attractive proposition…. keep a look out for early bird prices.

UK bankers' bonus tactic rejected as salaries set to explode

Bankers' attempts to get around the impending bonus cap has been thrown out by European regulators. The European Banking Authority (EBA) had already clamped down on excessive payouts to financiers. Bonuses are not allowed to exceed basic pay – or twice that amount, if shareholders approve.

However, many banks concocted a scheme to get around the new cap by bringing in 'role-based

allowances.' The tactic was spearheaded in the UK by HSBC and Goldman Sachs, but followed by most of the major international banks.

Now the EBA has declared that such schemes are in breach of the rules. The EBA delivered a formal opinion saying that in most cases the allowances it had seen fell the wrong side of the line and are variable pay and so do not increase the cap, but rather eat into it, said lawyers *CMS Cameron McKenna*.

While what is fixed pay and variable pay is not defined in the clearest of ways, the EBA analyses the legislation, what was intended to be caught and how the allowances it has reviewed interact with the legislation. *While its own analysis is not entirely clear either, the fact that the allowances can be easily withdrawn and do not feature in notice pay are two aspects that the EBA thinks put the allowances into the variable pay, rather than the fixed pay category. To be fixed pay, a degree of performance is required - the ability of a bank to withdraw or reduce them, or not renew them, is not helpful.*

The report warned that the quarterly and monthly allowances given to top staff were simply a ploy to blunt the impact of the cap, due to be introduced next year. The EBA can, as a last resort, directly order banks to stop certain practices and its chairman told an economic affairs committee of the House of Lords that he had found some allowances problematic. "We found some problems with the formulation of the role-based allowances because they are very discretionary," said Andrea Enria. "They can be changed at the discretion of firm. In our view ... there are concerns in some of these to qualify as fixed."

Mr Enria said some allowances were acceptable such as those linked to market conditions in a specific jurisdiction and paid to everyone locally. "So for us they are indeed fixed allowances," he added.

EU financial services chief Michel Barnier said it showed that banks had not learnt their lesson from the crash. He added: 'Compliance with both the letter and the spirit of the law is a prerequisite to restore trust and stability in our banking system.'

The Bank of England is on the EBA board but refused to say how it voted. The Bank's enforcement arm, the Prudential Regulatory Authority, previously said the banker payments were their "least worst option."

Any allowances will now need to be analysed on their own particular facts in the light of the EBA's opinion. The PRA has not yet expressed any public reaction. However, anything which has even borderline elements will need to be carefully justified and cleared with the PRA. The PRA, though sympathetic to many banks and together with the UK Government is separately opposing the cap, nonetheless must now take the EBA's formal views into account. It may now be that salary increases simply need to be accepted in order to reach a level of fixed pay which allows the desired level of variable pay to be awarded. It is not entirely clear what happens when allowance arrangements have been in place for the past year and whether anything needs to change retrospectively or whether it is just forward arrangements that need to be changed. Further EBA guidelines on sector pay are also expected this year to affect 2015 and future remuneration and so there may be even more EBA views to take into account when setting pay for relevant employees next year

The UK is in the middle of legal action in an attempt to stop Europe from restricting bankers' bonuses. Lawyers expect some banks that have paid allowances will end up having to try and renegotiate pay contracts if the new rules are applied retrospectively. "If the allowances are not accepted then they will likely become salaries," said Stephane Rambosson, of **Veni Partners,** an executive search firm: "Salaries are going to explode."

EBA insistence that a bonus cap should be applied to bankers pay remains advisory and is, in any case, made on the basis of a decision that was outside the EU's powers (ultra vires), claimed secretary-general of the **Federation of International Employers**, *Robin Chater. "The fact that the EBA has not produced its final guidelines on the bonus cap has not prevented it from trying to apply pressure on banks and the Bank of England's Prudential Regulation Authority to introduce an effective cap now," said Mr Chater.*

"*What I do not understand is why the banks do not directly challenge the EU's powers to regulate pay? Past laxity by member states has allowed several EU Directives to contain remuneration-related elements that are not connected with 'equal pay' – the only valid grounds under the EU treaty for such measures to be introduced at an EU level. Thus measures governing job posting and temporary agency workers both contain unjustifiable pay clauses. If the founding fathers of the EU had wished to extend the its powers to cover remuneration then it would have been clearly specified within the EU treaty. As it stands – article 153 (5) of the Lisbon Treaty states that EU powers do not extend to pay, the right of association, the right to strike or the right to impose lock-outs."*

From November, the ECB becomes the main supervisor for top euro zone lenders, raising concerns in Britain that a single currency area will impose rules on the rest of the EU.

The use of 'allowances' as part of fixed pay was criticised by the **Investment Management Association (IMA)*** in a letter to FTSE company remuneration committee chairmen. In its 2014 *Review of the Principles of Remuneration,* the IMA said that while there was no need to change the existing remuneration principles, it viewed the payment of '*fixed allowances*' as being: "**Inconsistent with the spirit of simplicity, clarity and pay for performance. If a remuneration committee considers that the payment of an allowance is necessary, it should be clearly justified an explained in the context of the overall remuneration package."**

Members were generally positive about the way the first AGM season had progressed under the new remuneration regulations. There had been a good level of engagement between companies and investors. Companies had generally listened to the concerns of investors and had either altered their remuneration policies in draft or had given public assurances on aspects of them, said Andrew Ninian, director of corporate governance and engagement at the IMA.

However, some companies were deluding themselves if they thought that informing investors about *done deal* reward rises for executives was within the spirit of 'engagement,' he said. They had to be told *before* the new rewards were finalised.

Another IMA gripe concerned the disappointingly large number of companies who used the 'commercially sensitive' defence to avoid disclosing retrospective annual bonus targets and whether they were in fact achieved.

* The IMA has absorbed the investment affairs division of the Association of British Insurers

Centre member **Linklaters** provided a digest of the ABI's (now the IMA's) revised Principles of Remuneration: -

Available at http://tinyurl.com/ky6ljh6

For a copy showing changes since the last version, see http://tinyurl.com/nerzb2r

The Principles were issued with a helpful covering letter which is available at http://tinyurl.com/m2cuaug

The only change to the Principles relates to allowances:

Allowances: The use of allowances as part of fixed pay is not favoured and should be clearly justified and explained. This is mainly relevant to financial services firms.

Other key points:

Public assurances: The IMA has confirmed that companies which gave assurances to shareholders on policy before this year's agm do <u>not</u> need to amend policy at the next agm but should provide details in next year's remuneration report.

Inclusion of policy: In years in which a company is not putting policy to shareholders, it should include its <u>policy table</u> in the remuneration report.

Salary increases: The reasons for any salary increase in excess of inflation or the increase for the general workforce should be clearly explained.

Disclosure of bonus targets: Companies should retrospectively disclose the performance range for annual bonus targets as well as the level of performance actually achieved.

Threshold vesting: The IMA will look at absolute amounts payable to a director when considering threshold vesting levels, not just the portion of the award. Even 25 percent vesting for threshold performance (which is relatively common) can lead to substantial payments.

Vesting periods: Three years is the minimum vesting period. Companies should consider longer periods and/or holding periods.

For queries, please contact either Gillian Chapman, or Graham Rowlands-Hempel

HMRC loses ruling on clawed-back bonuses

HMRC is not going to appeal against the decision of the Upper Tribunal in the case of Julian Martin on 'negative earnings,' said Centre member **Deloitte**. The case affects employers and employees who pay or receive bonuses which are contingently repayable, as is increasingly required in the financial services industry and under the corporate governance requirements. It means that employees who have to repay all or part of their bonus as part of such arrangements may be able to reduce their current earnings by the amount repaid. This in turn should give employers more encouragement to draft claw-back provisions on a 'gross' basis (inclusive of tax) in the right circumstances. There is still uncertainty over the extent to which HMRC will accept the case as a precedent – but it is expected to produce guidance now that the ruling is final.

The Upper Tribunal (Mr Justice Warren, Chamber President) upheld the decision of the First-tier Tribunal in the case of Mr Martin on 'negative earnings'. The taxpayer was liable to repay a fraction of a signing bonus if he gave early notice to terminate his employment. He did give early notice and hence had to repay £162,500 under the contract. HMRC refused any relief for the fact that part of the taxed bonus had been repaid. The First-tier Tribunal held that the employee's liability to repay the bonus arose directly out of the employment contract. The taxpayer could therefore offset the repayment against his employment income in the repayment year. As the result was negative he could claim negative income for the resulting loss. The Upper Tribunal agreed but the reasoning is different. Mr Justice Warren agreed with counsel for the taxpayer Philip Ridgway that the relevant legislation (s 11 ITEPA) simply restated the pre-existing law more clearly. The payment to the employer arose under the contract, and was not liquidated damages, as HMRC had argued, so it reduced taxable earnings.

However, NIC is not recoverable on clawed back payments of income. It is unclear how the tax adjustment is made when the employee was paid in employment-related securities. Mr Justice Warren warned that where the question of negative earnings depends on the interpretation of the employment contract and the tax law on termination payments, the precise facts will be important.

Bonus Corner

Directors at Britain's biggest companies saw their average earnings rise by a fifth last year despite a nationwide wage squeeze. Boardroom executives at FTSE100 companies pocketed huge bonuses, according to a survey published by pay research

group **Incomes Data Services (IDS).** These helped push their average total earnings to £2.4m – 21 per cent higher than last year. This is almost 100 times higher than the national average wage of £26,500 per annum.
FTSE100 ceos now earn *120 times more* than their full-time staff, the report said. Critics said the findings showed a huge gap in pay levels between boardrooms and ordinary workers.
Most UK staff have seen their pay lag behind inflation since the financial crash. Wages are expected to rise in real terms this year as the economy picks up – but the increase comes after years of stagnant pay. Figures from the Office for National Statistics show there has been no real terms pay increase for rank-and-file employees in the UK for *ten years*.
The basic salary for most FTSE 100 directors rose last year by 2.5 percent – just below the 2.8 percent level of UK price inflation over the year, the IDS report said. However, they benefited from a significant boost in bonuses and other rewards. Most executives receive shares in their company – on top of a cash bonus – for hitting performance targets. Last year the number of such long-term share schemes paying out rose by 44 percent. Top directors enjoyed a 12 percent rise in bonuses. The findings cover chief executives, finance directors and any executive chairman sitting on FTSE100 company boards.
Steve Tatton, editor of the IDS report, said: "FTSE100 directors have seen their total earnings jump sharply in the last year, fuelled by a rise in the value of share-based awards. Bonus payments have recovered strongly following a downturn last year." Long-term share schemes give a significant boost to directors' earnings too, he added.
FTSE100 ceos – who are generally the highest paid in any organisation – receive an average basic salary of £832,000 and an average bonus of £1m. They benefit from share payouts of around £2m on average. Since 2000, the average pay for ceos has increased almost four-fold, the report says, while average wages have risen by just 48 percent.
Sir Martin Sorrell, the head of advertising giant WPP, faced outrage from investors after his total pay package soared from £17.5m to £30m last year, bolstered by lucrative share schemes. One third of the company's shareholders refused to back the rewards, which were criticised as "lavish."
Coca-Cola, facing criticism from **Warren Buffett** and other investors for its outsized employee share rewards, said it had adopted new guidelines that would limit its stock compensation plan and improve transparency, reported *Reuters.* The company said its new guidelines would extend the number of years award shares will last, formalise its practice of share repurchases to minimise dilution and renew commitments to open dialogue with shareholders on compensation matters. About 83 percent of shareholders voted for the company's 2014 equity plan when it came up for renewal in April, according to a Coca-Cola filing following the company's agm. However, the approval figure included a significant number of shareholders who had abstained from the vote, according to Reuters calculations.
Buffett, whose Berkshire Hathaway held nine percent of Coca-Cola and was the company's biggest shareholder, was among those who abstained. The billionaire said in an interview with *Bloomberg* that while he considered the reward plan to be "excessive" he did not vote against it out of loyalty to the company. **Wintergreen Advisers**, which owns less than one percent of Coca-Cola on behalf of clients, has been the most vocal critic of the company's equity plan, saying it greatly diluted the holdings of current shareholders. "Coca-Cola has finally conceded that the equity compensation plan it put to a vote of shareholders in April was outrageously excessive and inconsistent with past plans," said Wintergreen ceo David Winters. "No amount of backtracking by the Coca-Cola board of directors can hide the fact that we believe it tried to sneak one by shareholders in Coca-Cola's proxy materials and statements at the April shareholder meeting," he added. Under the new guidelines, Coke's compensation committee will limit the grants under the equity plan to an annual 'burn rate' of no more than 0.8 percent in 2015. The burn rate refers to the number of shares granted as a percentage of outstanding shares. The guidelines will facilitate a shift toward performance shares and be less heavily weighted toward stock options.
Deutsche Bank is withholding several million euros in bonuses from its co-chief executives and other current and former top managers.
Goldman Sachs says it is determined to keep compensation costs under control. So when the bank's revenue increases, bankers' bonuses won't. Goldman reported a 25 percent increase in quarterly revenue, but the money it set aside for compensation and benefits rose only 18 percent from the same period a year earlier. Compensation set-aside is unchanged, as is the average compensation per employee, at $320,000 for the first nine months of the year. Sources at Goldman Sachs described the restraint as a sign of the shifting mentality about bonuses at the bank: it wants to tightly control compensation, even if it has good quarter results, which translates into bigger profits for the bank and more money for shareholders. Compensation experts say similar changes are happening across Wall Street.

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