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it's our business

newspad of the Employee Share Ownership Centre

All-employee schemes need radical overhaul

The Centre, with the support of leading members, is urging Boris Johnson's new government to reform all-employee approved share schemes - after latest HMRC statistics showed that usage of both SAYE-Sharesave and the Share Incentive Plan (SIP) is in decline.

Not only are fewer companies operating these schemes, as compared to a decade ago, but employee participation rates are static - at barely 20 percent on average. In addition, some of the key rules, which determine Income Tax and NICs relief, are no longer fit for purpose in the 21st century workplace, claim members like **RM2.**

"Careers are no longer linear, jobs are often casual or part-time, tenure is short or intermittent and millennials plead cash poverty," said Nigel Mason, senior associate at RM2. "*The latest HMRC statistics point to the need for a complete overhaul of the all-employee schemes.* Whereas EMI continues to thrive, the all-employee schemes are in long term decline, with fewer and fewer companies offering these schemes. The next prime minister should prioritise employee share ownership as a flagship policy for broadening ownership in a more inclusive economy," he added.

Centre chairman Malcolm Hurlston CBE, wrote to Chancellor Sajid Javid, praising him for being the leading advocate of all-employee share ownership within the government. When he was business secretary, Mr Javid defied his senior civil servant to ensure that almost 150,000 postal employees received a further one percent of Royal Mail's equity in the form of free shares, then worth £50m, giving them collectively more than 12 percent of the company via the UK's largest employee share ownership scheme – a five-year SIP. Mr Hurlston told the chancellor that share schemes reform should include better linkage between the tax breaks and the benefits obtained by all employee participants. The chairman added: "Private equity like KKR (the global investment firm) has taken a lead in giving share incentives to **all** employees and explaining to investors why it is a good idea. They use answers that work (e.g. restricted stock units) and not putting tax breaks first."

The minister who deals with ESO in Boris Johnson's

From the chairman

As a result of Boris Johnson's Cabinet clear-out, we have two Esop-friendly ministers at the Treasury, the new chancellor Sajid Javid MP and Jesse Norman MP, who remains financial secretary. Up until now, it is Mr Norman who has made the running, meeting the Esop movement's key advocates, such as the Centre and the Share Scheme Lawyers Group. That may change as Mr Javid, when business secretary, over-ruled his top civil servant by ordering an extra one percent of Royal Mail's equity, worth £50m, to be handed over to its employees. In short, Sajid is a believer in all employees owning shares.

His arrival at No 11 Downing Street could not be more timely, as all-employee share ownership is in the doldrums. In this issue, we analyse the latest HMRC share scheme statistics, which show that the corporate usage of both SAYE-Sharesave and the Share Incentive Plan (SIP) is either stagnant or falling. Furthermore, employee take-up of these schemes is often 20 percent or even lower. Yes, it is good news that the share options based Enterprise Management Incentive (EMI) is booming and that the Company Share Option Plan (CSOP) is recovering, but these are both discretionary schemes, in which employers can choose whom to reward and whom to leave out.

My task in the coming months will be to lobby hard for an overhaul of all-employee share ownership plans. The government must be made to see that these ageing schemes must be refreshed, if not recast, in order for capitalism to become inclusive in the UK. More must be done to encourage millions more employees to participate in employee share ownership, for their own long-term benefit, as well as that of the companies who adopt all-employee schemes. The taxpayer needs a bang for his buck at a time when adventurous employers are ready to put tax breaks second.

Malcolm Hurlston CBE

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new government is still **Jesse Norman MP** who remains in post as **financial secretary** to the **Treasury.** He is well regarded by share scheme practitioners.

The latest statistics, available on the HMRC web site, show that:

*The number of companies operating **SAYE-Sharesave** was just 490 in the year ended April 2018, compared to 510 in 2017 and 520 in 2016. Less than a generation ago well over 1,000 UK companies were using SAYE. While the number of companies which granted SAYE options in fiscal year 2017-18 went up slightly, from 280 in the previous year to 300, the number of employees *granted* **SAYE** options fell from 400,000 to 340,000, said HMRC. Similarly, the number of employees who *exercised* SAYE options in 2017-18 fell from 140,000 to 120,000. Twenty years ago (1999-2000), the number of employees who exercised SAYE options was almost **four** times higher – at 465,000. Similarly, the number of employees who were *granted* SAYE options in 1999 -2000 was **one million.** The decline could not be more striking.

*Much the same story emerges for the **SIP,** as the number of companies which awarded/sold SIP partnership, free, matching and dividend shares slumped from 530 to 490 between 2016/17 and 2017/18. The value of SIP free shares awarded had already fallen by 80 percent by 2016-17, but stabilised in the following fiscal year. However, the value of Partnership, Matching and Dividend shares in 2017-18 all declined from their 2016-17 levels. Partnership and Matching shares show a marked decrease of 30 percent and 38 percent respectively. Further, the estimated cost to the Exchequer of combined Income Tax and NICs relief from SIP shares fell from £410m in 16/17 to just £310m in 17/18.

*There was better news about the **Company Share Option Plan (CSOP)**, as 1200 companies used it last year, compared to 1140 in 2017 and 1150 in 2016. However, last year's slight increase in plan uptake should be compared to ***4270*** companies operating CSOP in 2001 and 3360 in 2003. The *value* of CSOP options granted remained broadly constant last year, but the number of employees granted options decreased, causing the initial value at grant per employee to increase.

*Finally, the hugely popular SME share options-based **Enterprise Management Incentive (EMI)** powered ahead again. In 2017-18 the number of companies and individuals granted EMI shares continued to increase (companies using EMI rose from 10,350 in 2017 to **11,700** last year, an increase of 13 percent, although the total value of the grants fell relative to 2016-17. Similarly, the number of companies where options were exercised increased and the number of employees exercising options and the value of their gains remained broadly constant. In 2018, just 7,000 EMI participants, who had cashed in their options, gained from £280m tax relief in that year. This reinforced criticism that approved share schemes are being used mainly by middle and high earners, especially in the financial sector, and by long-serving older employees.

To summarise, the number of ***live*** approved schemes being operated in the UK last year were: **CSOP 1,320, EMI 11,700, SAYE 570** and **SIP 850,** the first two being discretionary schemes, in which employers can choose which groups of employees or individuals can participate, said HMRC. Approved employee share schemes are not costing the Treasury as much in Income Tax and NICs relief as they used to. Across the board, employees received an estimated £500m in income tax relief and £305m in NICs relief **(£805m** in total) in 2017-18 from employee share schemes, said HMRC. This was 13 percent lower than in the previous year, mainly due to a 24 percent fall in SIP relief and was the second consecutive year in which these amounts fell.

The total number of companies operating approved employee share schemes increased by 12 percent in the year 2017-18, rising to **13,330**, but almost all of this was due to the advance of EMI, which is delivering substantial net rewards for key employees in smaller companies. Participation rates in all-employee schemes remain low: for example, only 21 percent of eligible employees in SAYE schemes and only 17 percent for SIP partnership shares.

Mr Mason added: "Twenty years ago, the then Chancellor Gordon Brown invited a group of share scheme experts to advise HMRC on what became the EMI and SIP schemes. That collaborative approach produced robust schemes that have stood the test of time. All we need from the new PM is permission to start work. The CSOP is probably the next best choice, after EMI, for companies looking to implement discretionary share option arrangements for employees. It is similar in several ways. How can share schemes be made more inclusive? Answer = SIP free shares and Employee Ownership Trust (EOT)-style bonuses, where all employees benefit from the trust."

The Centre is campaigning for other fundamental share scheme rule changes including: *Companies, as well as employees, should be offered tax incentives for operating all-employee Esops *Cut the SIP full tax relief qualification period from five to three years *Consider making participation in employee share plans, in principle, compulsory, though subject to an opt-out clause. As in pension auto-enrolment, employees could be opted into an Esop and would have to physically opt out if they wished to be excluded from participation *Better incentivise the creation of employee ownership trusts (EOTs), which are growing in popularity in the SME sector *Consider the creation of a mechanism whereby the ***value*** of employee shares could be transferred from one job to another, if the employee so wishes. This already works well in the company pensions sector for employees who want portable pensions

*Expand the EMI scheme to take in larger companies and perhaps allow EMI to operate in some subsidiaries of multinational companies *Boost SAYE by exempting employee gains during plan participation from Capital Gains Tax *On the corporate governance front, compel listed companies to include in their annual reports a free-standing section explaining what their Eso policies are and listing the various employee share scheme they operate and how many participants there are in each.

New Lib-Dem leader Jo Swinson is Eso fan

Jo Swinson MP, the newly elected leader of the Liberal Democrat party, is not only its first female leader, but also a big fan of employee share ownership. Centre chairman **Malcolm Hurlston CBE**, who knows Jo, is seeking a meeting with her to discuss how employee financial participation will feature in the Lib-Dem's manifesto for the next General Election. Ms Swinson, minister of state for employment during the former coalition government, has spoken at events. Jo traced employee ownership back to the philosophy of Jeremy Bentham and said that such models improve productivity and led to lower absenteeism from work. She led the employee ownership group meetings at the Department of Business Innovation and Skills (*now BEIS*) and even backed an amended version of the controversial *Shares For Rights* scheme of ex Tory Chancellor George Osborne.

Mr Hurlston said: The victory of Jo Swinson over Ed Davey is great news for employee share schemes. It aligns the UK party with the forward-looking views of its strengthened grouping in the European Parliament. There will be common ground with new Chancellor Sajid Javid who shared her experience of Business and is the biggest fan of employees becoming shareholders."

Centre member Estera to merge with Ocorian

An impending merger of **Estera** and **Ocorian** will create a global corporate, fund administration and trust services giant. **Inflexion Private Equity** announced that it is to acquire **Estera**, a leading global provider of funds, corporate and trust services from Bridgepoint, another private equity firm. Following completion of the investment, Estera will be merged with Inflexion's existing portfolio company **Ocorian**, forming a global organisation serving more than 8,000 clients from 18 jurisdictions, including Bermuda, Cayman, Guernsey, Ireland, Jersey, Luxembourg and Mauritius. Both Estera, which employs 550 people, and Ocorian have been long-term Centre supporters. The combined businesses will comprise 1,250 professionals globally across the corporate service, fund administration and private client sector. In particular, Ocorian clients will benefit from Estera's North American presence (Bermuda, BVI and Cayman), while Estera clients will be able to leverage Ocorian's strong links to the Middle East and Africa. Estera has offices in Guernsey and Jersey. Its new state-of-the-art Guernsey centre recently opened, bringing together the company's 100-strong local workforce under one roof. Ocorian employs dozens of people in its Channel Islands business, which is based in Jersey. There is little overlap between the companies making it a complementary deal. This merger is the latest in a long series of trust amalgamations and takeovers, as the Channel Islands business consolidates, in order to meet higher regulatory and compliance costs, such as data privacy.

Farah Ballands, Estera ceo said: "We are delighted that we will be combining with Ocorian, which with Inflexion's support, will help us develop and grow the business even further. We look forward to implementing an ambitious joint growth plan." **Stuart Layzell**, Ocorian ceo said: "This is a landmark transaction for Ocorian. Together both businesses will be able to offer an enhanced service to their clients wherever they are located. The whole team looks forward to working with the team at Estera to take the enlarged business forward." **Simon Turner**, managing partner, Inflexion, said: "Since carving out Ocorian from Bedell Cristin in September 2016, the business has successfully completed four acquisitions, significantly diversifying its client offering geographically. The combination of Ocorian and Estera is truly trans-formational, creating a global, market leading business of significant scale." The acquisition was made by affiliated funds advised by Inflexion Private Equity Partners and is subject to regulatory approval.

***Estera** has been recognised as a Tier 1 firm in the *eprivate client* 'top trust' companies rankings for 2019. The tiers are based on reputation, quality of service, size and global scale. Ms Ballands said "The last few years have been tremendously successful for Estera. We have seen very strong results with significant revenue growth and we have built a well-diversified business. *Eprivateclient*'s recognition of that is a great endorsement of our approach."

Huge data privacy fines worry plan administrators

On successive days, the **Information Commissioner's Office (ICO)** issued two fines totalling **£282m** on **BA** and **Marriott International** for breaches linked to cyber-hacks of the personal data of millions of their customers. Armed with tough new powers linked to the introduction of the

EU's new **General Data Protection Regulation (GDPR)** data privacy rules in May last year, Information Commissioner Elizabeth Denham is stomping around the data protection world, which includes employee share plan administrators, like a T -Rex, according to one City commentator.

Centre legal member **White & Case** pointed out: "Data protection authorities (DPAs) across the EU are beginning to issue significant fines for non-compliance. Failure to comply with the GDPR can result in regulatory investigations, fines, and damages claims, all of which could undermine trust and confidence among consumers and investors. DPAs have the power to issue fines of up to €20m or four percent of annual global turnover (whichever is greater) for ***each*** breach of the GDPR. It is clear that European DPAs are willing to make use of this power to impose significant financial penalties. The ICO's enforcement actions come a few months after the French DPA issued a similarly significant €50m fine against a technology company, also for alleged breaches of the GDPR.

Meanwhile, in the US, **Facebook** agreed to pay a record **$5bn** fine by regulators over serious data breaches which allowed **Cambridge Analytica** to harvest data from 87m Facebook members. The US **Federal Trade Commission (FTC)** imposed the huge fine to settle an investigation into Facebook's handling of user data and privacy lapses. "Despite repeated promises to its billions of users worldwide that they could control how their personal information is shared, Facebook undermined consumers' choices," said FTC chairman Joe Simons. In addition, the FTC fined credit scoring agency **Equifax $700m** for botching a software patch that allowed hackers to enter its databases and obtain the personal financial information of 147m Americans.

The ICO's annual report hinted that **Cathay Pacific,** the airline that suffered a cyber-hack of the details of 9.4m passengers late last year, could be next in the firing line. The hacking exploited a decade-old unpatched vulnerability in Cathay's cyber-security.

Share scheme administrators will be worried, or even alarmed, by all this. The question is to what extent they can afford to double down on the risk factor by buying even more cyber security.

The EU-wide GDPR, brought into UK law under the newly revised Data Protection Act 2018, broadened the definition of what counts as personal data. Under the ICO's old regime, fines for data breaches had been capped at £500,000, but after the introduction of GDPR, regulators are able to fine companies up to four percent of global turnover. *As well as offering a windfall for HM Treasury coffers, the ICO's fines are sending shockwaves through the corporate world as governance executives recalibrate the risk of having inadequate cyber-security measures.*

Data privacy danger areas for administrators:

GDPR's definition of Personal Data includes an identifier such as: name; an identification number, such as an NI or passport number; location data, e.g. home addresses or mobile phone GPS data; or an online identifier, e.g. IP or email addresses. Sensitive personal data is covered too in GDPR as special categories of personal data, which specifically include: genetic data relating to the inherited or acquired genetic characteristics which give unique information about a person's physiology or the health of that natural person; biometric data for the purpose of uniquely identifying a natural person, including facial images and fingerprints; data concerning health which reveals information about your health status, including both physical and mental health and the provision of health care services; racial or ethnic origin; political opinions; religious or philosophical beliefs; trade union membership and sex life or sexual orientation.

Under existing and new data protection rules, anyone who processes personal information must ensure that the information is: adequate, relevant and not excessive; processed fairly and lawfully; obtained only for one or more specified and lawful purposes, and not further processed in any manner incompatible with that purpose or those purposes; accurate and up to date; processed in accordance with the rights of data subjects under the Data Protection Act 2018; kept for no longer than is necessary and secure (using appropriate technical or organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data).

Denham, an archivist from Canada, was unobtrusive at the ICO's headquarters in Wilmslow, Cheshire, after starting her job three years ago. That began to change last October when she slapped a £500,000 fine on **Facebook** over the **Cambridge Analytica** scandal. For Facebook, which generated revenues of $55bn (£44bn) from advertising last year, the fine was almost invisible. However, Denham's subsequent fines of **£183m** on BA and **£99m** on Marriott are a sign of the changing regulatory environment. *They will serve as a stark warning to companies that fail to protect private consumer data from loss, damage or theft. They will now boost compliance and unleash huge extra investment into cyber-security.*

The hacking of Marriott and BA exposed the data of 500m customers and 380,000 passengers worldwide. Security firm **RiskIQ** pinned the blame for the BA data theft on a gang called *Magecart*. The gang stole more than half a million payment card details by adding just 22 lines to a piece of code, known as a script, on the BA website. But that script, known as Modernizr, was not originally written by BA. Before the BA hack another Magecart robbery – this time of details on **TicketMaster**'s website – gained access through vulnerabilities in third-party chat-bot software. Even major websites rely on countless tools and features written and built by other people and companies. The volume of cyber-attacks on UK business is increasing by 179 percent per year. Several US states are preparing to impose privacy laws, led by the **California Consumer Privacy Act,** which could end in far bigger penalties for non-compliance. The California rules, due to be introduced in January, allow for fines of between $2,500 and $7,500 per individual offence, meaning penalties could quickly escalate to staggering levels in the event of a large-scale cyber-hack. Other US states and countries including Australia are considering similar steps.

EOT flying high

Aviation solutions business **2Excel Aviation,** which has 170 staff across numerous sites, is now employee-owned, having decided last year to sell 51 percent of the business to its staff, using the tax-approved **employee ownership trust (EOT).** Under the scheme, employees were able to buy shares by providing an official 'IOU' to the original shareholders. The company's projected growth pattern aims to allow it to create options such as refinancing, sale of shares and flotation; using these, employees will be able to pay off the original amount pledged to the founding shareholders, and benefit from any remaining value accrued. 2Excel Aviation's main shareholders, its founding directors, took the plunge in order to encourage its employees to help expand the company – which serves the defence, agriculture, events and travel sectors. Thus 2Excel Aviation has become the first UK-based aviation business to become employee-owned, said *Employee Benefits magazine.* Recognising the pivotal role that employees have in developing and growing the business, 2Excel Aviation's directors chose this EOT model as an efficient way to link organisational performance with individual success and encourage staff to think of their actions in the wider business context. To inform them about the changing ownership model, the company sent a letter to all members of staff on the day it became employee-owned. Since then, it has produced infographics and FAQs, and held listening lunches between employees and the directors. As part of the communication campaign, the organisation produced a video about employee ownership which is used both internally and in the external recruitment process. This video features testimonials from employees, discussing the effect that the EOT has had on their sense of ownership of their role, the working culture within their teams, and their engagement with the success of the business.

EVENTS

Centre high table fully booked

There was swift demand for places at the next Centre dinner-discussion on August 29, when chairman **Malcolm Hurlston CBE** will host ex Cabinet minister and Esop fan, the **Rt Hon Sir Michael Fallon MP**. Last year Sir Michael was asked by the government to identify new employee share ownership formats, a probe to which the Centre contributed. Thank you to members who have booked their places at the high table. Diners will enjoy a lively discussion in the intimate atmosphere of the Hurricane room at the RAF Club, Piccadilly.

Guernsey 2019 – November 8

The next Esop Institute/Society of Trust & Estate Practitioners (STEP) Guernsey share schemes for trustees seminar will take place on **Friday November 8 2019** at the Old Government House Hotel, St Peter Port. The outline programme for the half-day event, includes talks on: EBTs as internal market makers for unquoted companies; managing trapped assets within EBTs; and the latest on entrepreneurs' relief. More topics will be announced shortly. Last year's event was an outstanding success, which we look to emulate this year, building on the achievements of this industry-leading networking and learning opportunity. Prices: **Esop Centre/STEP** members: **£375** non- members: **£480.** Book and pay before September 20 2019 to choose one of the following early-bird discounts: 50 percent off a third delegate or ten percent off the total. Reserve your place now by emailing events@hurlstons.com or by calling us on 020 7239 4971.

Speaker opportunities at Centre symposium 2020

Speaker slots are being reserved for the Centre's fourth British Isles share plans symposium, which will be hosted by senior legal member **Linklaters** at its **London** headquarters on **Thursday**, **March 26** next year. Practitioner members and share plan issuer companies are invited to apply for speaker roles. Plan issuer company representatives who agree to deliver an all-employee or executive equity incentive plan case study will be admitted free of charge. **David Craddock,** who leads his eponymously named share schemes consultancy has registered as a speaker, as has **Jane Jevon** of **Pett Franklin**. Her topic will be: *CSOP, the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.* A speaker from **Linklaters** will join the line-up too. The Centre's contact at Linklaters, **Alexandra Beidas**, partner in the incentives division, told *newspad* that Linklaters was delighted to host the all-day event in its auditorium. The symposium will be chaired by **Malcolm Hurlston CBE**. The practitioner member speaker rate is **£275** and member delegates will pay **£395.** Non-member practitioners will pay **£595** for their tickets. Members who wish to participate in this key event – either by co-sponsoring our e-brochure and/ or by delivering a presentation - should contact **Fred Hackworth** at: fhackworth@hurlstons.com or call the team on +44 (0)20 7239 4971.

MOVERS AND SHAKERS

On the move

*__Sir Jonathan Thompson__ is to step down as **HMRC** ceo in the autumn to take on a new role as ceo of the **Financial Reporting Council**. An announcement about his successor will be made later. Jim Harra, deputy ceo and second permanent secretary at HMRC, continues to lead for HMRC on exiting the EU. See https://deloi.tt/2M0fGD4

*__Michael Manley__ former Jamaican PM who died in 1997 was a convinced supporter of Eso, revealed the *Jamaica Observer.* His widow, Glynn Manley, noted recently that just before his death, Mr Manley had called together all the bauxite mine directors in Jamaica to discuss a planned Esop, known to have been his brainchild. "He was in his death bed; unbelievably frail-looking and he wanted to promote them using Esop, the Employee Share Ownership Plan," said Glynn.

Apex acquisition of Link Corporate Services

The acquisition of Link's corporate services and private clients (CSPC) businesses by **Apex Group** has been completed. The transferring businesses formed the new Apex CSPC division, part of the global Apex brand. Overall, the acquisition increases Apex's global assets under administration to more than **$650bn** with a global workforce of more than 3,000. The only immediate change is the brand trading name, and the legal names of the regulated entities which hold engagements to provide services to its clients. There are no changes to the leadership teams or day-to-day contacts. Email addresses remain 'firstname.surname@linkgroup.je' for a short transitional period. Re queries, contact Peter Mitchell, business development director, corporate services & private clients (part of the Apex Group) in St. Helier, Jersey.
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UK CORNER

Check-out staff check in to SAYE windfall

Staff at Leeds-based supermarket chain **Asda** received a collective £62m windfall from a company -wide SAYE-Sharesave scheme. Almost 25,000 Asda staff hit the jackpot thanks to their participation in the three-year share options-based saving scheme. Asda colleagues saved between £5 and £300 directly from their salary each month for three years. They can now buy shares in the company's US owner, **Walmart,** at a 20 percent discount to the market value when they started saving and then sell their shares, to cash in with a very profitable return, or hold them longer term. Their return is boosted by an increase of more than £50 per share in the Walmart share price, which is at its highest level ever. The option price included the 20 percent discount on the Walmart share price, which then stood at £36.99, while at the maturity date on July 1, it had risen to £87.12 (now £92) – meaning that employees have more than ***doubled*** their savings money. The Asda scheme has been running since 1982, but this year sees the biggest payout since Walmart bought the supermarket chain in 1999. It is exploring options for a stock market float of Asda after its multi-billion pound merger with Sainsbury's collapsed following opposition from the **Competition and Markets Authority (CMA)** watchdog. An Asda spokesman said: "A colleague putting aside the average of £70 per month would save £2,520 over the three years, but with the increase in share price, will receive £5,924.50 in their bank account, if they cash in their share options and then sell their shares, giving an average return of ***£3,404.50***. On the same basis, someone saving the maximum of £300 would take home £25,353.42 of which ***£14,553.42*** would be profit." Hayley Tatum, Asda's senior vice president, people, said: "Giving our colleagues the chance to save each month, risk-free, is just one of our ways of saying thank you and a great way to ensure that they reap the rewards for their exceptional efforts."

Employee share plan windfalls are often spent on holidays, weddings and home improvements. Shiralee Brunson, from Asda's Long Eaton store, said she would spend the money taking her sons, their partners and her grandchildren away on holiday to celebrate her and her husband's 40th wedding anniversary. She said: "*Nowhere else would I have been able to get such a great return and it means that we'll be able to have a really special and memorable holiday. Everyone in the store is so excited about their savings and I think we've all spent the money already*."

*About 300 employees at **The Hut Group** have shared a £21m windfall after it increased sales. The Manchester-based online retailer, set up in 2004 by Matthew Moulding and John Gallemore, sells cosmetics through its *Look Fantastic* and *Glossy Box* brands and health food products under its *Myprotein* label. It employs more than 5,000 people in Britain and was valued at £4bn last year. Ceo Mr Moulding, 47, revealed that the company's share buyback scheme, which involves him buying back performance share awards granted to employees, had resulted in several employees becoming multi-millionaires, with "no one in the scheme receiving less than a couple of hundred grand". He said that staff in the scheme had included airport drivers.

Having a laugh?

Top executives at **Stagecoach** took maximum bonuses last year despite presiding over the transport giant's ignominious exit from the railways and a slumping share price. Ceo Martin Griffiths received a bonus of £848,000, lifting his total package of pay and perks to £1.8m. Fd Ross Paterson was awarded a £565,000 bonus, giving him a total £1.2m reward package. Stagecoach has endured a difficult year. In May 2018 it handed back the keys to the East Coast main line between London and Edinburgh, after running up £259m losses. This April, the company was disqualified from three new rail franchise competitions, meaning it will be removed from the railways when contracts on the West Coast and East Midlands routes end imminently. The bonuses received by Stagecoach top brass were equivalent to 130 percent of directors' salaries, and were given for various criteria including ***"supporting the corporate reputation of the group and its reputation as an effective and efficient operator."*** (*You may need to read that sentence again - editor*).

Academics still troughing

A disgraced vice-chancellor who resigned amid an inquiry about his conduct was awarded a £270,000 *golden goodbye*, as the regulator found systemic failings at **De Montfort University**. Prof Dominic Shellard resigned in February during a watchdog investigation into governance and "a number of regulatory matters". His salary had risen from £286,000 in 2016-17 to £350,000 in 2017-18, when De Montfort University was ranked ***82nd*** in the UK by the *Complete University Guide*. Prof Shellard enjoyed £2,700 a year membership of *The Club* at the chic ***Ivy*** restaurant in London as part of his package - a privilege rescinded by his successor. The higher education regulator, the **Office for Students (OfS),** said that it had found "a number of issues which caused concern". These included weaknesses and failings in the university's management and governance arrangements which it said were "significant and systemic." De Montfort University promised to improve oversight of the international travel of some members of the governing body (and on occasions their partners), including breaches of the uni's financial regulations and failing to ensure it represented value for money. The uni acknowledged shortcomings over previous governing body appointments and claimed that new members would be appointed with "rigour and independence". Paul Cottrell, acting general secretary of the **University and College Union**, said it was astounding that despite serious failures of leadership and governance by Professor Shellard, De Montfort still saw fit to award him a "whopping" £270,000 after his departure. There is controversy over the generous remuneration packages of top university staff, with large pay rises being awarded to vice chancellors at universities which sometimes have poor academic performance. Mr Cottrell added: "*Institutions cannot continue to plead poverty on staff pay while rewarding their leaders so handsomely and with so little scrutiny. The time has come for proper transparency of pay and perks in higher education, and for staff and students to be given a seat at the top table."* In a letter to all staff, the interim vice-chancellor Prof Andy Collop explained that the board of governors had approved a payment "*in line with the former vice-chancellor's contractual entitlement, which stipulated a notice period of nine months. This equates to a payment of £270,000."*

Corporates cut pension contributions

Some of the UK's biggest public companies have slashed contributions to their pension schemes while ramping up payouts to shareholders, raising concerns about alleged *short-term* management, claimed a report in *The Telegraph*. Research by **The Pensions Regulator (TPR)** revealed that since the 2007-8 financial crisis, FTSE 100 companies have cut the amount they put into their defined benefit pension schemes by ten percent, while dividends and share buybacks have soared **140 percent**. The findings came after the regulator updated its guidance to companies on how it expects them to fund pensions, telling those struggling to plug funding holes in their pension schemes to stop handing cash to shareholders. Scrutiny of corporate pension deficits intensified in the wake of the collapse of **BHS** in 2016, which had a £571m hole in its scheme, forcing the taxpayer funded TPR to protect the pensions of 19,000 people. **Carillion**, which collapsed last year, had 28,500 members with final salary pensions. Over the past decade, FTSE 100 companies between them put about £82bn into their defined benefit (DB) pension plans – *schemes that pay pensioners a set amount irrespective of the performance of the fund.* During the same period they delivered almost eight times that amount (£636bn) to shareholders via dividends and buy-backs. "*This analysis has very uncomfortable echoes of Carillion, where directors held the pension schemes in contempt, stripping whatever cash they could out of the business to hand to themselves and shareholders*," said Frank Field MP, chairman of the work and pensions select committee.

***Executive pensions** are a new arena in the battle against lavish compensation in the UK and investor opponents have chalked up some early victories. A single sentence in the revamped corporate governance code, which states that "*pension contribution rates for executive directors, or payments in lieu, should be aligned with those available to the workforce,"* set the tone. Pension contributions are hardly the largest component of reward packages, but they now translate into significant sums, given that ceo base salaries run into hundreds of thousands of pounds, wrote the *FT*. Ceos who received pension contributions or payments in lieu of 40 percent or more last year included Bill Winters at **Standard Chartered**, Albert Manifold at **CRH**, the building materials supplier and Friedrich Joussen, head of Anglo-German tour operator **Tui**. Some investors have been swift to act when companies drag their feet.

Standard Chartered's board winced at its agm when ***36 percent*** of investor votes went against its remuneration policy. Anger centred on a change *(sleight of hand?)* in how its executives' pensions are calculated, **with the bank now using basic salary *and share payments* as a base from which the allowance is calculated.** Mr Winters' pension cash contribution payment last year was equivalent to 40 percent of his cash salary but this year the bank said it would be only *20 percent* of his ***total*** compensation, prompting an outcry from investors. The bank said Winters' fixed base salary comprised £2.4m in cash *and* shares. Martin Wheatley, the former ceo of the **Financial Conduct Authority** criticised bankers after Winters, branded investors as "immature" for opposing his ***£5.95m*** total reward package. **"It is the bankers who are immature,"** said Wheatley. ***"Shareholders are trying to make a broader point: bankers are taking too much of the bank's returns in pay. People have short-term memories. It is wrong to criticise shareholders for holding a company to account."*** Winters reopened the row over the £474,000 he takes every year in lieu of a pension, which led to 36 percent of investors opposing his remuneration in May. Standard Chartered said it took alignment with the governance code "very seriously" and plans to reduce its pension contributions for new executive directors to ten percent.

A **PwC** analysis of half the FTSE 100 companies that have a calendar year-end for their annual reports showed that **47 percent** had adjusted pension contribution rates downwards for new executives while 14 percent had done so for incumbents. One is the **Royal Bank of Scotland (RBS)** which will pay Katie Murray, its new cfo, a pension lump sum equivalent to ten percent of her base salary, in line with that of a typical RBS employee. Her lucky predecessor enjoyed a pension contribution rate of 35 percent. Change is being driven by the governance code and by investors who have extravagant reward in their sights, said Fiona Camenzuli, head of PwC's reward and employment practice. "The code has given the opportunity to do it," she says. "*It is really about the opportunity to bring down executive pay."* Critics, though, say progress could be swifter. Changes to current pension arrangements have proved elusive. "For existing executives it is more difficult as there are contractual arrangements," said Ms Camenzuli. In many cases the reductions have been minimal. Following a protest by staff union *Affinity,* **Lloyds Banking Group** reduced an annual £74,664 payment that ceo António Horta-Osório was set to receive on retirement — by a mere £1,464, which reflected an arrangement to recognise a pension he gave up when he left Santander, his previous employer. Separately, his pension contribution rate was reduced from 46 percent of his base salary in 2018 to 33 percent this year, compared to a maximum of 13 percent for most Lloyds employees. In its annual report, Lloyds said Mr Horta-Osório had agreed to cut his pension allowance "to bring this closer to that of the majority of the colleagues." The new median contribution rate at companies that have reduced rates for incumbent executives is **15 percent**, according to PwC's analysis — down from 25 percent, but still way ahead of the 10 percent median rate for most employees. "*This is particularly egregious since defined benefit schemes went out*," said **Sarah Wilson**, ceo of consultancy **Minerva Analytics**.

Andrew Ninian, director of stewardship and corporate governance at the **Investment Association**, is pleased with progress so far. "We see the new joiners as quite important, as that sets the expectations for the market," he said. The UK trade group recently wrote to remuneration chairs at FTSE 350 companies saying that pension contributions for executive directors should be equal (percentage-wise) to those received by non-management employees.

HMRC extends period for granting EMI options

HMRC has extended the period during which a company using the **Enterprise Management Incentive** (**EMI)** may grant options using the agreed market value of its shares - from 60 to **90 days**, reported Centre member **Pett Franklin.** This was revealed in **HMRC's ERS bulletin 32**. Key among share scheme changes concerned the popular approved discretionary share options scheme. Provided all the other requirements are satisfied, if the exercise price of an EMI option is set at or above market value at the time of grant, a subsequent exercise and disposal of the shares acquired should not be subject to income tax and NICs charges. The converse is that if EMI options are granted at less than the market value of a share in the company on the date of grant, income tax and NICs are charged at the point of exercise, on the difference between the market value of the shares at the exercise date and the amount paid for the shares (i.e. the exercise price set from the outset). While it is not mandatory to agree a valuation with HMRC before the grant of EMI options, it is advisable to make use of this facility to crystallise certainty. HMRC said that agreeing a valuation protects against the market value of shares acquired via the exercise of EMI options being challenged at a later date and if the value of shares in the company has significantly increased in that period of time, the income tax and NICs charges may be significant. HMRC specifically referred to the due diligence process in the event of a sale and the potential implications on a company of failing to fix the market value of shares at the time of grant. Depending on the quantum of options to be exercised and the potential PAYE and NICs liabilities, the uncertainty of whether the options will qualify for EMI tax treatment in the event of a sale could potentially be a key area for negotiation between seller and buyer.

IR 35 tax crackdown reaches private sector

As part of the government's crackdown on 'disguised employment', the IR35 'off-payroll' rules that apply to the public sector will be extended to the private sector from the new fiscal year, in April 2020, said Centre member **Bird & Bird**. From **April 6,** private sector businesses will be responsible for assessing the employment status of the off-payroll workers they engage. These changes are intended to increase compliance with the IR35 'off-payroll' rules that have been in place since 2000 and will affect many businesses and contractors. SME and large companies in the private sector who contract with intermediaries (*often, but not always, a personal services company (PSC) for the provision of employee services)* will have to account for tax and NI through PAYE themselves, in the same way as the public sector. The Centre is monitoring this because many '*disguised remuneration'* schemes have used an EBT, or even two, via which, *loans* to employees are made. The new requirement would apply if, the *underlying relationship* between the end user and the worker, was that of employment. At present, the intermediary is responsible for operating PAYE rather than the end user, so this will be a major shift. The new rules will require an end-user client to *determine* the employment status of an individual supplied via an intermediary *and communicate* its decision and written reasons directly to: (a) the party that it directly contracts with; and (b) the individuals themselves. If the end-user client decides that, but for the intermediary, the individual would be an 'employee' of the end user for tax purposes, it will be the end-user rather than the intermediary that will need to account for income tax and NICs (both employer and employee) on any fees it pays to the intermediary (excluding VAT). In the event of non-compliance, the party which failed to cascade the information would bear the tax liability. If HMRC is unable to collect the outstanding liability from that party, e.g. because it no longer trades, the government proposes that the liability should transfer back up the chain.

*__HMRC__ suffered several defeats in court over the employee/contractor issue, of which TV presenter Lorraine Kelly was the most high-profile. She won her £1.2m case in March after the judge agreed that she was a 'character' played by the presenter. In September, HMRC reached an out-of-court settlement with Susan Winchester, a contractor who had been engaged by HMRC itself. She argued that if she paid employee taxes, she should receive holiday pay.

*The smallest SMEs will not be affected by this reform. In these cases, the *intermediary* will continue to make the necessary determination and operate PAYE where appropriate. The government will use the Companies Act definition to determine whether or not a corporate client is 'small'. If it satisfies two or more of the following requirements: *annual turnover of not more than £10.2m; balance sheet total of not more than £5.1m; and not more than 50 employees*, it will be deemed to be *small* and thus exempt. The cost, in terms of lost tax revenue, of non-compliance with the off-payroll working rules in the private sector is growing and will reach **£1.3bn** a year by 2023/24. Bird & Bird recommends that businesses which depend on individuals engaged through intermediaries consider major changes to their engagement models, on-boarding processes, payroll systems and perhaps their ability to retain talented individuals in flexible roles. Ministers recommended that businesses affected by the proposed reform:

- look at their current workforce (including those engaged through agencies and other intermediaries) to identify individuals who are supplying their services through PSCs
- determine if the new off-payroll rules will apply to contracts that extend beyond April 2020. Businesses should use the *Check Employment Status for Tax* service to do this.

New Prospectus Regulation fully in force

The EU Prospectus Regulation entered fully into force on July 21, including the much anticipated ***new wider employee share plan exemption***, said Centre member **Linklaters.** This will be a significant change for non-EU companies operating broad-based share purchase plans. Changes to some of the key exemptions used for offering equity incentives to EU employees came into effect last year. Companies should ensure that their share plan offers across the EU (including the whether UK) comply with the requirements - checking changes are needed to plan brochures or other employee communications. Implications of the new regime can be complicated. Linklaters offered to help identify whether companies need to amend any share plan documents (*contact Alex Beidas or Nancy Price).* From July 21, the prospectus exemption for share plan offers to EU employees became available to ***all companies***, not just those which are listed or registered in the EU. This change is good news, especially for US companies operating broad-based employee share purchase plans, as many either produce an EU prospectus (at significant cost), or do not extend these plans to their EU employees. The newly widened employee share plan exemption will reduce the impact of Brexit (after any transitional period) for share plan offers by UK companies after July 21 this year. Without it, many UK companies would have found themselves in the same position as US and other 'third country' companies when offering their plans in the EU. **UK and Brexit:** All companies relying on the employee share plan exemption from July 21 will need to check that they meet the relevant requirements, including providing employees with a document containing detailed info on the number and nature of the securities and the reasons for the offer. Other key changes in share plans took effect on July 21 last year: the €100,000 exemption and €5m exemption (= total value of offers over a 12-month period) were removed. A new €1m exemption now applies, but member states can raise this limit to

€8m, as has the UK. The exemption for offers to fewer than 150 people per EU state is unchanged and offers of non-transferable securities (so most options and RSUs) will continue to fall outside the prospectus regime.

Draft regulations on directors' reward

The government published draft regulations (*Directors' Remuneration Policy and Directors' Remuneration Report)* which will, if implemented, make changes to the directors' remuneration regime for quoted companies in order to comply with the new **EU Shareholder Rights Directive**. The majority of the SRDII provisions on directors' remuneration are already in force under the existing regime, said Centre member **Travers Smith**. The new provisions were being implemented to ensure full compliance with the directive, applying from June 10 this year, in accordance with the transitional provisions set out below. UK quoted companies - those listed on the FCA's Official List, on another EU regulated market, or on the New York Stock Exchange or Nasdaq, are already subject to the regime and so will be in scope. Under these regulations, the regime will be expanded to cover ***unquoted*** companies, i.e. UK companies which are not listed, but which are traded on an EEA regulated market, such as companies on the *High Growth* segment of the London Stock Exchange. Note that AIM companies are exempt. Where such companies are not already complying with the provisions of the regime, they will be allowed to make payments in accordance with existing practices until the first approved remuneration policy takes effect. A remuneration policy will need to be put to shareholders in the first financial year beginning on or after next January.

- ♦ A company's remuneration policy and report will cover any person not on the board of directors who carries out the function of ceo or deputy ceo (regardless of title).
- ♦ The provisions that previously allowed a payment which was inconsistent with the remuneration policy to be made via an ordinary resolution will now require an amendment to the remuneration policy.
- ♦ Where a remuneration policy is put forward at the agm, but not approved, the company must put forward a new policy at the next agm. The last approved policy will remain in place until a new one is approved.
- ♦ The remuneration policy will be required to include: details of any deferral periods concerning any element of a remuneration package; details of any vesting periods and any holding periods concerning share-based remuneration; the duration of contracts or arrangements with directors; an explanation of the decision-making process for the calculation, review and implementation and measures to avoid or manage conflicts of interest and an explanation and description of all significant changes compared to the previous policy.
- ♦ The directors' remuneration report will be required to include: the total fixed and variable remuneration for each director (in the 'single total figure' table); any change to the exercise price or date of any options; the annual percentage change in remuneration over the **five** financial years preceding the relevant financial year of *each* director, compared to the average annual percentage change for employees of the company on a full time equivalent basis and any deviation there may have been from the procedure set out in the company's remuneration policy for calculating directors' remuneration.
- ♦ Remuneration reports must not contain certain types of sensitive personal data (such as racial or ethnic origin or sexual orientation). Remuneration reports will need to be retained on a company's website for ten years (and may be retained for longer if they do not include personal data). The date and results of the vote on a remuneration policy will need to be retained on the website for as long as it is applicable.

*In 2018, ceos in the US top 350 companies on average earned **312 times more** than the average employee. In the UK, the CIPD reported last year that the mean ratio of ceo pay that they analysed was **145 times more** than the average employee pay package, with the top earner hitting a ratio of 1,130 times more.

De-listings crisis of capitalism

After the second major European buy-out of the month, the £4.8bn **Merlin** deal is significant for more than just the leisure industry. It is yet another step in the decline of the quoted company, wrote Matthew Lynn in *The Telegraph.* "***One by one, firms that were once the cornerstone of the major equity indexes are delisting their shares and opting to be owned privately instead. The number of quoted companies is in freefall.*** This closes off big business, and the wealth it generates, from ordinary people. If we don't reverse this trend, public support for open, free markets will keep declining – because the public won't have a stake in them"

Kirkbi, the investment vehicle for the Kirk Kristiansen Danish family that founded the **Lego** empire, teamed up with the buy-out giant Blackstone and the Canadian pension fund CPPIB to pay £4.8bn for Merlin, the operator of some of Europe's best-known theme parks. From unpromising beginnings making brightly coloured plastic bricks, Lego is quietly turning into a 21st century Disney, with a brand that stretches from toys to parks to films.

"The real significance of the buy-out is that the public markets will lose yet another major company. *Earlier this month, the buy-out giant* ***KKR*** *made a £6.1b offer for Germany's largest publisher,* ***Axel Springer****, the owner of Bild, and that is expected to be completed soon***.** The private equity funds are sitting on an estimated £2tr of cash – and more is being raised all the time. *They will have to spend that sooner or later, and the targets are increasingly major listed companies*. You can debate whether **buy-out funds** are good or bad owners of companies. Some do really well, while too many are starved of investment, saddled with suffocating debts and allowed to decline slowly while the funds squeeze out profits and fees.

*"*The real problem, however, is that as they buy up more and more quoted businesses, there are fewer and fewer left on the traditional stock market. *The public company has been in decline for years, and that trend is accelerating. In the US, the number peaked at more than 7,000 in 1996 but has more than halved since then.* ***The London market peaked at more than 3,000 companies but is down by a third to less than 2,000. The same is true of every other major stock market in the developed world.***

"Add in the rampant share buy-backs by the companies that remain quoted, and there is a relentless process of *de-equitisation***. *The number of shares that can be bought falls all the time.*** *A public listing was initially a good way for founders to cash out, or to raise some capital. Over time, it became the vehicle that enabled most of us to have a stake in a free market, and share the wealth it created. Through pension funds and ISAs, most families owned a slice of the world's biggest businesses. As they grew, everyone got a little richer. That is not true of the private markets. Without a vibrant stock market, capitalism is simply going to die off.*

Over a couple of decades, support for a system that works for only a few mega-rich families will ebb and ebb, until it eventually collapses. We need to find a way of reversing that," added Mr Lynn.

STOP PRESS: Defence and aerospace group **Cobham** agreed to a £4bn takeover by private equity group **Advent**, which would lead to yet another delisting, subject to regulatory and MoD approval. Many of its 2,000 UK employees participate in either its SAYE or its SIP, or in some cases, both. They were anticipating a bonanza, as Cobham's share price rose by 34 percent to 165p, matching the offer price, but there was speculation that other players could create a takeover battle.

*The City has been hit by a series of disappointing technology floats too. **Uber**'s ride-sharing rival **Lyft** is still down on its issue price. **Spotify** has struggled since it listed its shares. The peer-to-peer lender **Funding Circle** is well below its issue price.

*Retail tycoon Philip Day took control of ailing clothing chain **Bonmarché** after its second largest shareholder sold out to the billionaire. Artemis Investment Management offloaded its 12 percent stake in the over-50s fashion retailer for just £773,000, as fears mount over the company's future. Mr Day now owns 83 percent of the equity and so can take Bonmarché private.

*One of the biggest flotations planned in London this year was pulled after potential investors recoiled at the price being asked. **Swiss Re Advisers** said it had suspended the IPO of **Reassure**, a £3bn zombie insurance funds business, in response to weak demand from big UK institutional investors. The Swiss reinsurance company, which co-owns the business with the Japanese **MS&AD Insurance Group**, had set a price range of 280p to 330p. It wanted to float about 26 percent of the business.

*Companies have resumed listing in London after a disappointing start to the year following the Brexit extension to Oct 31. Figures from **EY** show 15 firms joined exchanges in the three months to June. The London Stock Exchange's main market had ten debuts, raising £3.8bn, while companies listing on the junior Aim market raised £194m. Combined, the two posted a 39 percent increase compared with the same period last year. However, while the funds raised rose significantly, the number of companies floating fell by almost 40 percent. Two of the world's biggest listings took place in London. The Dubai-based payments firm **Network International Holdings** raised £1.1bn in April, slightly more than **Trainline.com**.

Brexit

Thousands of City of London based financial products, such as syndicated loans, swaps and other derivatives may have to be relocated to EU-based banks as a 'hard' Brexit looms, warned Palo Alto based corporate lawyer Cooley. Regulations that currently cover the City of London may stop applying when Brexit takes effect, which “could make it necessary to relocate thousands of financial products used by corporates to an EU-based financial entity,” said the international legal group, known for its expertise in high tech companies, marquee IPOs and venture capital financing.

“Many companies may decide that they need to move headquarters, factories or other facilities or stock up on materials and components. For some companies, one of the most significant issues will be whether they will need to relocate to EU-based banks financial arrangements, such as syndicated loans, swaps and other derivatives, that are currently located at banks in London. That could be a costly, time-consuming and paper-intensive process,” warned Cydney Posner of Cooley.

He said that the US Securities & Exchange Commission (SEC) was already sharpening its claws over the perceived obligation of UK based companies and others to disclose the potential impacts of a hard Brexit on their businesses.

Determining whether relocation was necessary would likely depend on whether the UK and EU were able to agree to a free trade deal that included financial services and allowed the UK to function much like it had with its current ‘passport’; whether the UK was instead granted equivalence status by the EU, which allowed non-EU financial firms to offer a limited range of mostly wholesale services—such as securities trading and clearing—to European customers under certain conditions, or, the result that the market appeared to be pricing as increasingly likely, whether the UK became a *third country* after a hard Brexit with no agreements in place; or whether some other permutation emerged. Financial contracts with an aggregate value of **$2.7 trillion** could be affected. In light of the current uncertainty, companies had been considering if they needed to “re-paper” their financial contracts (or would be able to make any changes only in future agreements) and the potential impact on hedge accounting.

COMPANIES

***Chapel Down Group** announced that following the exercise of share options under its employee share option scheme, 10,000 new ords of five pence each were admitted to the NEX Exchange.

*__De La Rue__ suffered a major investor revolt over executive pay in a show of shareholder anger at management of the banknote printer. Almost half – 48 percent – of votes cast at its agm went against the remuneration report. The protest at the non-binding vote on pay came as De La Rue reeled from blows that have sent its shares more than halving over the past year. In its annual results, De La Rue revealed pre-tax profits had almost halved and warned of more bad news to come. Part of the reason for the profit plunge was an £18m charge relating to Venezuela being unable to pay De La Rue for a contract because of US sanctions placed on it. Management were questioned at at the agm over how it was allowed to happen. Richard Bernstein, fund manager at **Crystal Amber**, claimed Martin Sutherland, De La Rue’s ceo who announced he was resigning, received his £197,000 annual bonus only because the invoice for the Venezuela contract triggered it. “*It is outrageous the invoice was raised even when it was common knowledge sanctions were coming which meant it would not be paid,”* Mr Bernstein said. Mr Sutherland, who will stay on until a successor is found, was at the controls of De La Rue when it lost the £400m contract to print UK passports. Other concerns about the remuneration report include the £132,000 pension contribution Mr Rogerson is in line for, equal to 30 percent of his salary, a level which the **Investment Association** said was too high. Mr Bernstein, who is calling for the ceo to repay his bonus, described the revolt over pay as a clear example of investor anger: “Investors lost £18m because of the Venezuela provision – that’s almost a third of the company’s annual profit. It’s simply scandalous.” De La Rue said it was “disappointed with the lower level of support” for the remuneration report adding it was “committed to continuing to engage with shareholders”. It noted that “shareholders have been motivated by different and sometimes contrasting factors in reaching their decisions”.

Deutsche Bank** scaled back redundancy packages for hundreds of its City staff last month in an attempt to rein in costs during the current radical transformation of its business. Deutsche offered out-going staff a package of statutory redundancy pay plus a one-off payment of less than ten percent of salary, said insiders. In addition, those shown the door were paid for notice periods — typically three months —which is taxable. Contrast this with the stellar level of pay-offs for Deutsche Bank top brass over the past 15 months. John Cryan, who presided over some of the bank’s biggest failings as ceo from 2015-2018, received $12.2m when he was forced out in April 2018. According to research by the *Financial Times*, six more senior executives who departed between May 2018 and July 2019 — Marcus Schenck, Kim Hammonds, Nicolas Moreau, Garth Ritchie, Frank Strauss and Sylvie Matherat — received ***€41m between them**.** Almost 650 Deutsche bankers managed to make more than €1m last year, of whom, 100 made more than ***€2.5m***.

*Directors of **Dixons Carphone** asked for their annual bonuses to be paid in shares and deferred for two years. The annual report said that the decision was made because they were *mindful* that the results of their attempts to make changes to the business are "not yet reflected in the share price." The company is planning to introduce deferred bonuses, along with other measures including reduced pension contribution limits for new-joiners. Ceo Alex Baldock was paid £1.7m, including a £619,000 bonus while new fd Jonny Mason received £626,000. They will however get their long-term bonus award in **shares** - based on performance over the next three years - of up to ***250 percent*** of their salaries, the committee said. This was after the "[remuneration] committee gave detailed consideration as to whether the overall size of the award should be scaled back in response to the fall in share price". Among the factors taken into consideration was their decision to defer their annual bonuses. About 31,000 staff received share-linked bonus awards.

***Kingfisher** shareholders fired a warning shot at management over executive reward at the **B&Q** owner's agm. Almost a quarter (24.19 percent) of votes cast – 415m voting shares - went against the remuneration report, amid concerns over rewarding company executives despite poor financial performance. In March the firm reported a 53 percent slump in annual pre-tax profits to £322m. This shareholder rebellion over alleged excessive executive reward means that Kingfisher joins many other major companies on the **Investment Association**'s '*name and shame'* list. A link to the IA's register is on the Centre's website at *www.esopcentre.co.uk/news/newspad.*

*Keith Loosemore, executive chairman of software firm **Micro Focus,** who is one of the FTSE 100's best-paid executives, sold 650,000 shares, worth £11.6m in order, he said, to diversify his personal investments. "*Until now, all of my assets have been held in Micro Focus shares. Having recently turned 60, it is time for me to diversify a little, although around half my personal wealth remains in the stock*," he said. Investors voted against Micro Focus's remuneration report at the company's agm earlier this year because the firm decided to give executives an extra 12 months to hit a share price target of £34 each, which would trigger a bonus payment **£270m**. The targets scheme, put in place *after* Micro Focus acquired Hewlett Packard Enterprise's software business in 2017, means Loosemore could be in line for a £37.4m bonus payment.

***Pernod Ricard** employees were recently invited to take part in their first all-employee share ownership plan. Participation was offered to employees in 18 countries representing 75 percent of the group's workforce and proved highly successful, with an overall subscription rate of **41.5 percent,** a level rarely achieved when structured offerings are launched. This positions Pernod Ricard as one of the companies with the highest participation rates in an international programme, according to statistics from the French Federation of Employee Shareholder Associations, FAS (*Fédération Française des Associations d'Actionnaires Salariés*). The subscription rate exceeded 60 percent in several countries, such as India (76 percent) and Hong Kong (60 percent). In France, the subscription rate was 57 percent. Cédric Ramat, vp HR, sustainability & responsibility, said, "*The huge response from our employees at the global level, and in particular in a number of countries where this kind of scheme is not customary, is a testament to their commitment and confidence."* Pernod Ricard is the world's number two in wines and spirits with consolidated sales of €8,987m in the fiscal year 2018-9.

*Directors at AIM-listed manufacturer of engineering parts **Renold** were saved from another hammering over its executive reward at its scheduled agm, which was postponed after accounting problems were uncovered. Shareholder adviser Glass Lewis was recommending that investors vote against the remuneration report at Renold, a producer of chains, gearboxes and couplings. The investor showdown was put on hold when the company admitted finding errors in its financial results stretching back ***three*** years, profits had been overstated by £1.8m, it said. The revelation sent shares in Renold crashing by a fifth. Glass Lewis said it had concerns about thresholds for long-term incentives plans (LTIPs) being lowered and the remuneration committee using discretion to award annual bonuses of 20 percent of executives' base salary, despite a target to trigger the payout not being met. The adviser said it had severe reservations about the scheme and was sceptical of any discretionary upward adjustment to award levels, which might undermine the concept of transparent, target-based pay. "*Given the committee's use of upwards discretion to award executives a bonus despite the formulaic outcome, and the lowering of LTIP targets without a rationale, we cannot recommend shareholders support this proposal*," Glass Lewis said. At last year's agm, 25.4 percent of shareholders' votes were lodged against the incentive scheme. In its annual report, Renold's remuneration committee said that a replacement scheme "*was developed in the knowledge of this vote and [we] are consulting with shareholders ahead of the agm"*. The company said it started an internal audit investigation supported by **PwC,** adding that the problems relate to its gears business and had "arisen from the intentional mis-statement of the financial reports at local level". Renold said in light of its accounting fiasco, it would delay the agm until no later than September 30.

* Mike Fries, ceo of **Virgin Media** owner **Liberty Global,** has been the target of shareholder protests after receiving pay and bonuses of more than **$250m** since acquiring the cable operator six years ago. Mr Fries' total remuneration last year almost doubled to

$33m (£26m), despite a 40 percent slump in the company's share price. The payout came on top of a string of allegedly '*excessive*' rewards for the 56-year-old which upset investors ahead of Liberty Global's agm in London. The current value of his awards, about 90 percent shares, is lower due to the decline in its stock price since they were made. Last April, he signed a five-year contract that guarantees further generous payouts. Fries, based in Denver, is an associate of Liberty Global's dominant shareholder, John Malone. The company's shares are traded in New York, but it has been incorporated in the UK since the Virgin Media takeover, which has allowed it to avoid taxes lawfully across its retreating European cable empire. ISS, the shareholder adviser, recommended clients vote against the appointment of board members, the remuneration report and the mechanisms by which Fries is awarded shares. It said Liberty Global's pay policies were "cause for serious concern" and "indicate insufficient independent oversight and poor stewardship". Glass Lewis criticised it for failing to respond to such concerns previously and told its clients to oppose his reward package. Shareholders responded by voting only **75** percent in favour of the directors' remuneration policy for the calendar year 2018. Two other resolutions, to give directors more powers to allot shares and grant subscription rights, without pre-emption rights, received only **68** percent support. Liberty Global refused to comment.

***Vodafone**'s top executives agreed to cut their share bonuses by a fifth in an attempt to quell a potential investor revolt at its agm. The company, which in May cut its dividend for the first time ever, said its ceo, Nick Read, and its fd, Margherita Della Valle, had voluntarily requested the 20 percent cut in share awards in recognition of the company's plummeting value in the last year. Vodafone's share price has plunged 30 percent in 12 months, wiping more than £15bn off the company's stock market value, from £51bn to £35.7bn. "This was requested to reflect the low valuation of the share price following its reduction over the year," the company said. "Particularly the change in value between the date of the remuneration committee's decision in respect of the value of the awards and the date of grant." The agreed cut to the pair's long-term incentive awards will see them forgo 1.56m of shares, worth more than **£2m** at the current share price. The share awards, which have been granted, relate to the performance of the company over the next three years. The awards will vest at the end of the 2022 financial year. Read, Vodafone's former fd, took over the top job from Vittorio Colao in October and was paid total remuneration of £3m in the year to the end of March. Della Valle was paid £1.17m, according to the company's annual report. **ISS,** the shareholder advisory service, recommended that shareholders vote against Vodafone's remuneration report at its agm on **July 23**. ISS's report said the remuneration report should be rejected because share awards to bosses under Vodafone's long-term incentive plan were significantly higher than a year ago. "When there has been a material decline in a company's share price, remuneration committees should consider reducing the size of LTIP awards at the time of grant," ISS says. The advisory service Pirc recommended investors abstain from casting a vote on whether to accept or reject the remuneration report.

***WPP** acknowledged that giving its 130,000 staff relatively modest salary increases and bonuses and focusing on profit margin, rather than revenue growth, may have contributed to its financial woes in recent years. Paul Richardson, group fd, told the agm that he believed the world's biggest agency group had not been "sensible" in holding salaries and bonuses "tight" to inflation. Average pay per head at WPP was £51,800, including bonus and benefits, last year and base salary increased on average by 1.2 percent in 2018, 1.8 percent in 2017 and 1.5 percent in 2016, said the annual report. "We have for a number of years achieved good [profit] margin performance but at the sacrifice, in part, to incentives and holding salaries fairly tight to inflation," Richardson said. "I think ultimately that probably wasn't a sensible financial decision." WPP's revenues have declined every year since 2017, partly because of some big account losses. Margin has dropped from 17.4 percent in 2016 to 16 percent in 2018 and is set to hit about 15 percent this year. The company has changed its incentive scheme to put more emphasis on revenue growth as well as profit and is willing to set aside as much as £100m in additional incentives to motivate staff. Sorrell was one of Britain's best-paid bosses and his annual reward peaked at £70m in 2016 as profits soared and he collected huge long-term share awards, even though his base salary stayed flat for years at £1.15m. WPP subsequently reduced the size of its ceo's potential package.

WORLD NEWSPAD

Israel: Nazareth District Court ruled that dividend-only shares may qualify for the tax breaks of an **Esop**. The Court accepted that an Esop is not a fable by Aesop, to the chagrin of the **Israeli Tax Authority (ITA)** (Schochat v. State of Israel, Civil Appeal of July 4 2019) Esop plans approved under section 102 of the Income Tax Ordinance can both reduce Israeli tax and defer it until cash is realised if various conditions are met. Both shares and share options are permissible. There are different rules and tax rates relating to: 1) approved Esop for employees -capital-gains approach, 2) approved Esop for employees-ordinary income approach, and 3) unapproved options for employees. The capital-gains approach is the favourite for employees with less than ten percent ownership of the company. The gain is taxed at a fixed rate of 25 percent, and both the employer and employee are exempt from NICs. The employer is not entitled to any expense deduction regarding the options. An approved Israeli trustee must hold the options or shares for at least 24 months. The tax is deferred until the employee realises the options or shares or withdraws them from the trustee. Section 102 plans must be in a prescribed format and notified to the ITA at least 30 days before the plan is first implemented. The plan and trustee must be approved by the ITA, but if there is no answer from the ITA within 90 days of the notification, they are deemed to be approved.

In this case, a private company controlled by one individual issued a new class of shares to a manager, conferring rights to dividends only, so long as the manager was employed by the company. The shares were not transferable. If the employment ended, his shares became dormant. The manager received 22.7 percent of the new class of shares, entitling him to dividends equalling 9.99 percent of total dividends distributed by the company. Section 102 approval was requested in 2010. In 2012 a dividend was distributed, including NIS11.8m to the manager. In 2016 the ITA sought to review the Esop. The ITA claimed the dividend of NIS11.8m should be reclassified as salary bonus taxable at 50 percent, rather than a dividend taxable, in this case, at 15 percent. The ITA claimed the dividend was paid at the whim of the company and other income of the manager was down by 77 percent in that year. Failing that, the ITA claimed the arrangement was artificial and should be disregarded. The ITA imposed a 15 percent "deficiency" fine on the alleged tax underpayment, i.e. 65 percent in tax and fines apparently. The court ruled that the company had filed the paperwork for a Section 102 employee share plan and the ITA did not reject it within the 90 day period prescribed by law. Therefore, the ITA was deemed to have approved the plan. A trustee was appointed, so any tax arising was deferred until shares were realised. But what happens if there are only dividends, no realisation? Section 102 is intended to strengthen the connection between a company and its employees. The higher the profit of a company, the more that can be distributed as a dividend. The court concluded that the Section 102 rules and legislative intent are met in the case of dividend-only shares. Therefore, they should not be reclassified as salary. There was no artificial transaction. The court accepted the dividend-only Esop shares and cancelled the fine. The dividend is taxed at 25 percent under Section 102, not 15. Israel thrives on Esops. An Esop is not a fable that can be dismissed lightly by the ITA. So, more Esop checks can be expected by the ITA within the 90 -day limit. The writer, Leon Harris, is a certified public accountant and tax specialist at *Harris Horoviz Consulting & Tax Ltd.* leon@h2cat.com.

***Australia**'s **Afterpay Touch Group** bought 90 percent of the **ClearPay** business last year. It has launched its services in the UK using the ClearPay company and name.The company said that Afterpay Touch Group is now operating in the UK under the ClearPay name; ThinkSmart maintains ten percent carriage of Afterpay in the UK through its retained holding in ClearPay and also provides an outsourced customer service centre to ClearPay to support the product in the UK. A proportion of the ten percent retained shareholding (up to 3.5 percent of the total share capital of ClearPay) will be made available to employees of ClearPay under an ESOP, ThinkSmart said.

Oz (2): Westpac will overhaul how it calculates executive pay in response to last year's protest vote by shareholders and has admitted that the bank's culture can "dilute" accountability for its failings. Australia's second largest bank said that it recognised that its cuts to executive bonuses did not go far enough, with 64 percent of shareholders voting against the bank's remuneration report at December's agm. Chairman Lindsay Maxsted acknowledged that Westpac had not given sufficient weight to the reputational damage caused by revelations of misconduct at the financial services royal commission. He said an internal inquiry had shown Westpac needed to improve its approach to managing non-financial risks, and said work was already underway. "While our culture, governance and accountability settings in their totality generally support the sound management of non-financial risks, our approach is less mature than our approach to managing financial risks," Mr Maxsted said. "At the same time, the report confirmed that we have an analytical and consultative culture that can slow down decision making, create undue complexity and dilute accountability." If more than 25 percent of shareholders vote against an ASX-listed company's remuneration report at consecutive agms, a vote on whether to spill the board is automatically triggered.

***Germany: HORNBACH Baumarkt,** which operates 158 DIY mega-stores across Europe, is to acquire up to 55,000 treasury stock shares in preparation for the annual issue of shares to employees scheduled to take place at the end of this year. The €1.5m buyback meets the needs of its employee share scheme. The *buy-back* of shares will be executed in accordance with the safe harbour regulations set out in Article 5 of Regulation (EU) No. 596/2014 of the **European Parliament** and **Council** and with the delegated Regulation of the **Commission** dated March 8 2016. The buyback will begin on August 1, expiring at the end of the 2019/2020 financial year (balance sheet date: February 29 2020). The purchase price to be paid by the company per share may not exceed or fall short of the stock market price by more than ten percent. The market price referred to corresponds to the average of the closing prices in Xetra trading at the Frankfurt Stock Exchange on the five trading days immediately preceding the acquisition. The buyback will be managed by a bank that determines the timing of the treasury stock purchases and without influence from the company.

***Netherlands:** The ceos of 117 leading Dutch companies and semi-public organisations saw their earnings rise by an average of **7.2** percent last year, while shop floor wages rose just **2.1 percent**, according to research by the Volkskrant. The average ceo income is now some €1.8m a year, largely due to rising share prices and their impact on share deals, the paper said. Top earner last year was **Shell**'s Ben van Beurden, who earned €20m in salary, bonuses, shares, pension and other benefits. The package includes a €15m share bonus as a reward for his 'outstanding performance over the past three years'. Nancy McKinstry from **Wolters Kluwer** was second on the list with €13.7m, followed by **Booking.com**'s Gillian Tans on €12.7m. **Unilever**'s ceo Paul Polman earned €11.7m and **Heineken**'s Jean-Francois van Boxmeer €9m. The wage gap between ceo and average employee was biggest at Unilever, where Polman's gross income was **283 times** that of the average member of staff. Multinational executive pay rose 9.7 percent during the year to an average of €2m, the Volkskrant said. At state-owned companies, top salaries **fell** by an average of **12 percent** to €418,000 as the government continued to pressure public sector executive pay deals. Prime minister Mark Rutte said the government may reconsider cutting corporation tax if big companies did not start putting up wages significantly. 'The only thing which is going up is the salaries of senior staff, not people covered by collective labour agreements,' Rutte said.

***South Africa**: Around 370 employees of specialist marine solutions provider, **African Marine Solutions (AMSOL)**, are reaping the benefits of a payout created through the company's employee share ownership scheme, with many owning shares for the very first time. The scheme, introduced in 2016, has developed into a catalyst for economic empowerment and shared value creation within the maritime industry, with around 84 percent of the beneficiaries being black employees. It is a key element of the company's employee value proposition, according to AMSOL ceo and company appointed employee trust representative, Paul Maclons. "From the outset, great care was invested to ensure that permanent employees at sea and ashore, who are the backbone of our business, share equally in its success, irrespective of position and background. This is the second dividend pay-out employees have received since AMSOL acquired the business of SMIT Amandla Marine in December 2016. Our employees place a high value on being able to improve their financial circumstances through the trust, which is managed by trustees elected by the employees," he said. AMSOL's shareholding includes employees and management who together own a significant minority shareholding, as well as Pan-African Capital Holdings, the Mineworkers Investment Company and RMB Ventures. The company is 100 percent South African owned and 59 percent owned by Black South Africans, with a Broad-Based Black Economic Empowerment rating of Level 3. Maclons said the Trust's formation and impact were about creating value for employees and shareholders who have gained a defensive cash generative company into their portfolio.

***US: Hertz** is suing former senior executives for hundreds of millions of dollars, blaming them for an accounting scandal that rocked the company five years ago. The Florida-based car rental giant and its parent company have filed companion lawsuits, pointing their collective finger at four executives. Hertz filed the law suits after the executives refused to return incentive pay tied to inflated financial results, claiming that by doing so they violated the terms of their company contracts. Based on its *claw-back* policies, Hertz demanded that ex-ceo and chairman Mark Frissora and other former executives give back $70m in bonuses and other incentive pay — and that they return millions in severance pay they received after they resigned. In addition, Hertz wants more than $200m in damages from the executives for what it described as their "gross negligence and misconduct," which the company claims forced it to restate three years' worth of financial results for 2011-13. Hertz asserts the executives' negligence and other misconduct manifested itself in "*an inconsistent and in-appropriate tone at the top"* that triggered the re-statement, hurting the company's reputation and operations. Claw-back provisions for executive pay have grown in popularity since the passage of the **Sarbanes-Oxley Act** of 2002, the first federal law to allow for them, which was enacted in the wake of major corporate and accounting scandals involving companies such as **Enron** and **WorldCom** — but the corporate policies aren't exercised often. As part of a settlement with the US **Securities and Exchange Commission**, Hertz Global Holdings — the parent company of Hertz Corp — agreed to pay a civil fine of $16m over the financial 'mis-statements'. The SEC's order did not attribute the accounting errors or the restatement to anyone specifically — and it didn't find any intentional wrongdoing. The mis-statements led to other negative consequences for Hertz including costly class-action lawsuits and derivative actions by shareholders and expensive and lengthy investigations by several other federal and state government agencies.

US (2): The bankruptcy trustee and the ratepayer group TURN are calling on the federal bankruptcy judge to stop the California-based **Pacific Gas & Electric (PG&E)** from handing out up to ***$16m*** in bonuses to a dozen top executives this year.

The company, which filed for bankruptcy protection, has already admitted being at least partial responsibility for the catastrophic November blaze that destroyed thousands of homes in Paradise, California and which **killed at least *86 people***. A judge *is set to rule on PG&E's proposal of awarding between **$5.4m** and **$16.3m** in stock and cash to the top-tier management whose combined salaries approach $6m. The company wants up to $4m more to be set aside for two unspecified executives.* PG&E admitted last February that its equipment had probably caused the 'Camp Fire'. PG&E said it had recorded a $10.5bn charge in anticipation of damage claims for that fire, the deadliest in state history. Largely as a result, the company reported a **$6.9bn** loss for 2018. Though the cause of the fire is still under official investigation by California officials, PG&E said it "*believes it is probable that its equipment will be determined to be an ignition point of the 2018 'Camp Fire'*." The federal bankruptcy trustee's office filed a motion opposing the proposed bonuses, saying there is not enough information in the company plan to establish how the bonuses are to be awarded. In its court filing, The Utility Reform Network argued the bonuses are not justifiable, especially given all the safety problems that have come to light for PG&E. TURN's executive director Mark Toney said the request left him shocked and angry. "*I am absolutely outraged that PG&E has the gall to ask for executive bonuses,"* he said. *"Every dollar of shareholder money that goes to executive bonuses is a dollar less of shareholder money to pay wildfire claims. PG&E's priority should be paying wildfire claims, getting out of bankruptcy and not giving bonuses to its top executives."* In TURN's filing, attorneys argue the company simply has not made a case for the money. TURN's motion cites recent concerns expressed by US Judge William Alsup about the company's political contributions and safety track record at the time it was distributing $5bn in dividend payments.

US (3) For most investors, 2018 was brutal—with the Dow Jones hitting a record high mid-year and then quickly diving into its worst-ever losing streak in the final weeks of December. But that didn't prevent Wall Street's top money managers from getting decent pay raises despite their investors' woeful losses, said the *Wall Street Journal.* Last year, ceos of the country's largest banking and financial institutions received a median pay raise of 8.5 percent, while their firms recorded a 17 percent loss on investors' accounts, a new executive compensation analysis by the WSJ found. Examining ceo pay data at S&P 500 companies, it was clear that top executives in the finance sector received larger raises than their counterparts in other industries, which averaged 5.6 percent in 2018. Meanwhile, the average wage increase for all Americans for the year was estimated at around three percent, according to Mercer's 2018-2019 US *Compensation Planning Survey*. Financial institutions make up one-fifth of S&P 500 companies. Notable firms on the list include **JPMorgan Chase, Goldman Sachs** and **Berkshire Hathaway.** To lead the compensation race, Richard Handler, ceo of **Jefferies Financial Group**, an asset management firm, received $44.7m in total reward last year—a 105 percent increase from 2017—while the firm delivered a negative return of 15 percent in 2018. About 60 percent of Handler's pay was performance-based equity awards scheduled for the future. Handler's equivalent at JPMorgan Chase, the largest US bank, Jamie Dimon, received a reward package of $31m ($29m of which was performance-based bonuses), a five percent rise from 2017. JPMorgan's stock fell 6.7 percent in 2018, although the bank reported record net income of $32.5 bn and a 17 percent return on common equity. At the other end of the spectrum, **BlackRock** ceo Larry Fink took a 4.3 percent pay cut in 2018 after the company stock fell 37 percent during the year. And Berkshire Hathaway's ceo **Warren Buffett** received a salary of only $389,000 last year, the lowest among Wall Street ceos. Buffett didn't receive additional bonuses or equity awards. Berkshire Hathaway returned three percent for investors in 2018. Overall, finance ceos of S&P 500 companies received median pay of $11.4m last year, $1m below the median pay for all S&P 500 ceos.

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