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it's our business

newspad of the Employee Share Ownership Centre

Global giants scoop newspad awards

Multinational companies scooped up the accolades as the winners were announced in the 2020 edition of the *Newspad Awards.* Esop Centre judges praised an impressive and diverse group of winners, who included BAE Systems (British Aerospace); BT, Imperial Brands and M&S. There was a stand-out winner -the Daily Mail & General Trust - in a new Awards category: *Best share plan adaption to the Covid crisis.* – DMGT's winning submission set out its *Share Purchase+ and Salary Substitution* scheme, implemented in response to the pandemic, in order to preserve working capital and, ultimately, jobs. Another memorable winner was M&S for the high quality of its Sharesave 2020 *Share Plan Communications* entry.

All the 2020 awards were announced during the fourth British Isles Share Plans Symposium and each of the winners' certificates was displayed online.

The category winners and highly commended entries:

Best international all-employee share plan

Winner: BAE Systems This award highlighted the expansion of all BAE's share schemes worldwide in 2020 and its long track record of commitment to broad-based employee share ownership which is consistently good. It provided an ongoing annual award with an evergreen 'opt out' switch. The opt-out choice clearly is 'the way to go' when it is a non -contributing scheme. It entered both its domestic and international SIPs. Nominated by Computershare.

*Highly commended: **BT** for its BT-Your Share plan.*

The judges felt that BT was 'going the extra mile' by offering employees a free share plan. BT had achieved truly global parity and this commendation reflected its commitment to get 100 percent employee participation. Nominated by EQ.

*Special commendation: **Gamesys** for its international SIP.*

This entry impressed the judges as it was a first time plan adopter and had gone a long way quickly. Gamesys is evangelical about employee share ownership and included partners (non-employees) in its scheme, which chimed with the Centre's thoughts on the future of Esops being for all workers, whether classed as payroll 'employees' or not. Nominated by Global Shares.

*Special commendation: **LPKF Laser & Electronics for** the LPKF Employee Share plan.* Like Gamesys, LPKF impressed as a first time plan adopter which had rolled out its share plan in a short time. The German company had overcome cultural and administration barriers to gain wide adoption of its scheme. Nominated by Global Shares.

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Best executive/managerial equity reward plan (*more than 100 employees*)

Winner – Imperial Brands *for its LTIP.*

The judges were impressed that Imperial widened the footprint of who was in the share plan and thought hard about how the plan influenced behaviour, rolling it out as a reward vehicle. It linked the on-going existence of the share award under the LTIP to

From the chairman

Under the influence of the pandemic this year's annual conference was replaced by a webclave, with all the papers received in advance. Let me pick out a couple of nuggets from three consecutive mornings. First, research from Computershare showed that share plans really are the corporate glue in multinationals (if well done, of course); secondly, Jane Jevon made a telling case for the neglected CSOP and ways in which it bettered other schemes.

Since then we have seen from the US statistics not only on the cost to the administration of share plans but comparable figures for the benefits (many times more!) I shall be asking the government and well-disposed peers to provide comparable figures for the UK. We can't have much of a result without both sides of the balance sheet.

Malcolm Hurlston CBE

compliance with employee ownership guidelines - linking the two employee ownership concepts. Nominated by Computershare.
*****

Best share plan communications

The judges praised an overall "excellent group of nominations".

Winner – Marks & Spencer *for its Sharesave 2020.* Its communications made an impact, said the judges. Visuals were very good and were tied in with branding and key info pings out. Nominated by EQ.

Highly commended – Sky *for its Comcast Corp Omnibus Sharesave.* The judges liked Sky's focus on "*Sharesave is back*" with communications linked to its ESG initiatives, Net Zero and Ocean Rescue. The plan achieved a praiseworthy 48 percent employee take-up. Nominated by Computershare.
*****

Best use of technology, AI or behavioural science in employee share plans

Winner –BT, whose *Your Share* plan made good use of technology, with its impressive integrated weave of all its plans. The judges felt that the Mifid data capture upfront to allow the downstream administration to run smoothly was smart. It had used technology to make its share schemes simpler and had used behavioural science as well, by offering its free share plans to employees with an 'opt-out' rather than opt-in. Also impressive was its Workplace platform which made the process interactive and engaging for the employees. Nominated by EQ.
*****

Best share plan adaption to the Covid crisis

Winner – Daily Mail and General Trust (DMGT) *for its SharePurchase+ and Salary Substitution Plan.* The judges were struck by DMGT's response to the Covid crisis with a novel plan to award staff shares in exchange for a salary cut in order to save jobs and cash. The risk free plan was aimed at middle and senior management and 99 percent of those eligible joined the scheme (1600 out of 5700 employees). The judges felt it was a worthy winner as it was doing something new, specifically Covid-related. The main share plan objective was to preserve the company's working capital. It aligned with employees' interests and showed that awarding shares to employees can have a role in helping them to accept pay cuts. It was the most innovative response among the entries received. It had a positive business outcome too and even benefited employees who did not qualify, as it helped preserve their jobs and prevented furlough. "A real forward looking move," said the judges. **PS**: Although DMGT later halted the scheme, those employees who held onto their shares until January this year would have gained a windfall – as the group's share price rose from 638p on April 1 last year (when the scheme started) to 755p on January 4 – up 18 percent – and to 935p by late March, up ***46 percent*** over the year. Nominated by EQ.
*****

Outstanding company leader (*for chairman or ceo personally associated with company plans)*

Winner – Liv Garfield, group ceo **of Severn Trent:** The judges felt that Liv Garfield was a worthy winner, as she had gone out of her way to personally promote share schemes to employees, especially younger female employees and to key workers, emphasising that she too was a plan participant.
*****

Company whose employee share ownership impacts most on company success

Winner – Siemens Energy: Its *Special Payment* marked a major change in corporate ownership and the information which company included made its case compelling. The implied rationale was that the special payment supported the separate identity of the new de-merged entity. Nominated by Computershare.
*****

The judges were: **Damian Carnell**, a leading executive remuneration adviser and Centre steering committee member; **Deputy Gavin St Pier**, member of the States of Guernsey and former Centre director; **Ann Tyler**, solicitor with over 30 years' experience of legal and policy advice in both the Eso and EO sector and, in the chair, Centre founder **Malcolm Hurlston CBE.**

Centre share plans symposium, March 23-25

More than 70 people, including a large number of share plan sponsor companies, registered for the Centre's twice pandemic postponed **Fourth British Isles Share Plans Symposium,** which was held online over three days in late March.

Each day's webclave featured a specific theme, successively: *All–employee share plans & regulation*; *Executive equity incentives* and finally *Employee share ownership opportunities for SMEs*.

Necessarily, the event format was extraordinary – all the speakers' video presentations, together with slides, were pre-recorded and distributed among registered participants in advance by way of a dedicated webpage. Logging in, delegates 'met' that day's speakers, who formed a panel to discuss their topic themes. Each interactive webclave allowed delegates to ask panellists questions and to make comments in real time. Live delegate polls on key employee share ownership issues were a big hit throughout the symposium and hugely enjoyed.

Describing market trends, Centre speakers said that the Share Incentive Plan (SIP) had proved quite popular among newly installed share plans during the pandemic. Among the SMEs, the Enterprise Management Incentive (EMI) unsurprisingly was still the big favourite, though its complex rules were criticised as being "*an absolute pain*." In the large company sector, quite a lot were using retention equity bonus schemes, which helped preserve operating capital, rather than cash awards for managers and senior executives. However, an opportunity to spread employee share ownership culture perhaps was being lost as comparatively few companies had introduced *Shares for Salary Sacrifice* schemes for their employees, as the Daily Mail had done. Perhaps they were just too busy trying to stay alive, said one.

Day One was introduced by Esop Centre founder, **Malcolm Hurlston CBE**, who thanked **Ocorian**, the independent Channel Islands based provider of corporate and fiduciary services, for co-sponsoring the event. Malcolm praised the quality of the advance video recordings sent in by the speakers. He addressed the key issue of *how to make all-employee share schemes more popular with companies and their employees*. He agreed that one of the best things government could do for share schemes would be to reduce the current five year employee participation requirement for full tax relief in the Share Incentive Plan (SIP) to three years. Another rule should be changed to stop companies from "punishing" early scheme leavers. In addition, he praised the flexibility of the Company Share Option Plan (CSOP), of which much more use should be made than at present, he urged.

Stuart Bailey, associate director, business development, at **Computershare,** gave a presentation of a recent study carried out jointly by Computershare staff in Australia and a team from the University of Melbourne, led by Professor Andrew Pendleton, formerly professor of employee ownership studies at successively, York and Durham universities. The study examined the factors behind an employee's decision on whether to join their company share scheme or not, in this case a monthly employee share purchase plan, often with company matching shares and not dissimilar to a UK Share Incentive Plan (SIP), but with an annual invitation period, like a SAYE-Sharesave scheme. The Melbourne team interviewed 1,100 employees to find out why they had decided either to participate in the company share scheme, or not. Of these, just over 50 percent had joined the company scheme. A key finding was that the longer the share plan had been established, the more likely employees were to join it. Typically, where a company scheme was less than five years old, the employee take-up was very poor, with only 13 percent on average accepting it. However, where a work scheme was well established (*for more than five years)* employee acceptances were very much higher – at 72 percent. There was very little difference between take-up levels by gender or by income level, said Mr Bailey. Surprisingly, 40 percent of the refusers said that they might be encouraged to join the scheme, were it to be presented to them differently, which could read as Eso's untapped potential to expand. The research suggested that habitual employee subscribers to the company share plan could be used as informal recruiters among work colleagues who were doubters or refusers. For companies who were fairly new to employee share ownership, they need to spend a lot of time and effort educating employees about the value of share plans. Another finding was that more than two-thirds of employee participants decided on the first invitation day whether or not they would join the company share scheme. The implication was that if companies spent more time on their pre-offer communications, they would get higher employee participation in their share plans, said Stuart. Bite-size, easily digestible bits of information to help simplify such communications material, were recommended.

The survey showed that employees were on the whole well aware of how to join a company share scheme and least aware of the tax issues involved in such schemes.

The number one concern among share plan refusers was anxiety over the company's share price and whether it was falling or not. If it was falling, they were less likely to participate in the company plan, the survey suggested. More than three-quarters of employees in their company share plan knew about its share price. Most employees consult no-one else in reaching their decision as to whether or not to participate, but when they do, they usually consult family members and work colleagues, said Mr Bailey. On average, employees took more than four years to join the company's share plan(s) for the first time, he added. Another key point was proof from the survey that employee share plan participants felt more involved in the company's performance than those who were not.

In their presentation, **EQ's** (formerly *Equiniti*) md, employee services, **Graham Bull** and industry director, share plans, **Jennifer Rudman** discussed how all-employee share plans could remain relevant to - and provide for - today's workforce. Graham said that SAYE, launched in 1980, had got him hooked on employee share schemes. It was one the best and safest products in the market place because even if the share price fell below the option price close to maturity in three or five years time, participants could simply demand their savings back and not lose money. The other tax-advantaged all-employee plan, the SIP, launched in the year 2000, comprised three potential elements:

partnership shares bought by employees via deductions from gross salary; matching shares provided by employers and the additional discretionary award of free shares. Statistical tables showed SIP moving up slightly in popularity, while SAYE usage remained broadly stable and many companies operated both.
Jennifer said that the number of share plan invitations had dropped slightly due to Covid last year, but this year the number of companies putting in new schemes was rising. Graham said it was encouraging that many companies floating on the LSE were awarding free shares to their employees, if not launching share plans, as some did too. The pandemic had shown that the current five-year employee participation demanded by HMRC for full tax relief in a SIP was too long. She said that EQ fully supported the Centre campaign to have that tax qualifying period reduced to three years, as in SAYE savings contracts. The government should change the SAYE rules so that if the option price were underwater near vesting time, the original option price could be reset as a '*look-back'* feature, a change which the Centre supported, said Jennifer. Brexit hadn't really had much effect on share plan services except that both YBS and Barclays had withdrawn from providing services to Irish companies who used SAYE schemes.
Both Graham and Jennifer asked *why weren't more companies operating all-employee share schemes.* It was great when employees in some companies exerted pressure to install one and, as was the case for the SIP, employers could make savings, alongside the gains made by employee participants. They proposed some remedies: *Perhaps companies should have to explain why they didn't operate share schemes if expectation was high that they should. *Automatic employee opt-ins to company share plans was a possibility for government to consider, as was additional Corporation Tax relief. *Companies should seriously consider reducing employee plan eligibility to three months after joining the company and six months maximum.
To meet refuseniks' excuses that they didn't have enough money to participate, or that the share price was too volatile, companies should offer the full permitted 20 percent discount on the option price and offer free shares to employees more often.
Jane Jevon, partner at employee share scheme adviser **Pett Franklin**, spoke about the *Forgotten share scheme – the Company Share Option Plan (CSOP)* –and how to unlock its potential and avoiding its hidden pitfalls. Jane explained that the origins of the CSOP lay in the old Executive Share Option Scheme, which it replaced.
CSOP was a discretionary tax-advantaged share option scheme, where options were issued at market value agreed with HMRC. As there was a £30K limit to individual CSOP option holdings it was much more often used as an all-employee incentive these days than as an executive scheme. Performance targets linked to the options were possible, but had to be clear and objective from the outset. Interestingly, CSOP options had to be exercised between three and *ten* years of grant in order to keep its tax advantages, which made it more useful at a time when the share prices of many companies had fallen due to the pandemic, because option holders could hang on until the share price revived, she said. CSOP was the *go-to* plan when companies did not qualify to use EMI, either because they had grown too big or because they were in a non-qualifying activity such as banking or forestry. CSOP didn't require regular savings, as did SAYE schemes, which had the additional disadvantage that options had to be exercised within six months of vesting.
The main pitfalls, which resulted in CSOPs losing their tax advantaged status were those of failing to report the CSOP installation on the ERS portal within the July time limit and failing to make annual returns, said Jane. She reminded delegates that a decade ago, there had been some in government who had wanted to get rid of CSOP but the Centre had campaigned hard to save it. Big quoted companies liked CSOP because it was so flexible. She predicted that CSOP would still be available to companies for many years to come.
Jeremy Edwards, partner and head of share schemes at **Baker McKenzie,** examined the concept of paying employees via company shares, to deal with cash-flow crises during the pandemic. To date, the take up of *Shares For Salary* reduction schemes in the corporate world had been rather low, for a variety of reasons, including the need to focus on survival, or the fact that companies were awarding reduced bonuses, he said. However, a lot of companies were looking at paying out share awards, as it was important to keep employees involved in the business and cash bonuses were hardly ideal in that respect. In addition, share prices in some companies had remained historically low due to the pandemic and so it made sense from a future perspective to launch share option awards now. Salary sacrifice schemes were sometimes not suitable for the mass of lower-paid employees, as they might fall foul of minimum wage regulations, said Mr Edwards. The advantages of share awards included vesting requirements, retention rules and delaying salary tax points. However, there were securities law implications, most notably sourcing the shares, which needed to be either new issues, treasury shares or shares held in trust in order to save cash. Jeremy criticised the "lack of flexibility" in the use of treasury shares and complex regulation. Tax considerations surrounding *Shares For Salary*

reduction schemes could be problematic, he warned – different types of award had different international consequences for tax withholding, social security payments, recharging and tax deduction rules. As institutional bodies were not yet supporting such salary reduction schemes, the quality and relevance of corporate communications about them would be absolutely critical, he added.

The **second** day's webclave on executive equity incentives was chaired by **Alderman & Sheriff Professor Michael Mainelli**, executive chairman of the **Z/Yen Group**, which operates the Esop Centre. *Michael, who sits on remuneration committees, said that a dilemma on the executive reward front at present was whether boards and rem cos should go back on some cancelled or postponed executive equity rewards during the worst months of the pandemic. "Should we go back and reward these executives now?" he pondered. "After all, they have been through hard times and have worked very long hours to keep their ships afloat."*

Symposium participants gave one of the session's vox pop proposals the thumbs down over whether they would support the award of more powers to regulators to punish companies whose executive reward resolutions habitually attracted more than 20 percent of voter opposition at agms. Only 29 percent of the webclave participants said they were in favour of giving the regulator more power to punish; 50 percent said 'No', while the remaining 21 percent were 'don't knows.' Clearly, they thought it was more up to the shareholders to punish company boards over allegedly 'excessive' rewards, than regulators; More predictably, 85 percent of participants said they would support remuneration committees who adjusted executive equity rewards at vesting to prevent individuals receiving windfalls from Covid-related share price movements. This was queried by **Liz Pierson,** partner**,** tax & legal at **Deloitte,** who asked in practical terms how this could be done: "*It would be like trying to put the toothpaste back in the tube*," she said. Liz spoke about hard and soft laws affecting directors' remuneration. She defined *hard law* as legislation, listing rules and regulation, whereas *soft law* comprised the investor institutions, such as the Investment Association (IA), the UK corporate governance code and proxy guidance on shareholder voting. There had been little substantive change on both fronts during the past year, said Liz, though on soft law, companies were being asked how they would respond to the pandemic when setting executive remuneration. The revised corporate governance code set out remuneration principles and provisions for companies to follow: Companies had to report how the principles had been applied, what action had been taken and the outcomes. In addition, companies had to comply with the provisions, or explain what they had not. However, Liz said that for years there had been concerns about the *Comply or Explain* issue – it had been too much of a box-ticking approach both from companies and proxy agencies. "*There is a real reluctance to say that you won't comply with it and provide an explanation for it. Among my clients there is a concern that proxy agencies won't look at that in the round and so give them a cross in the box, rather than a tick*," she said. The FRC had recently published guidance to help companies become more transparent and said that companies and shareholders should not favour strict compliance over effective governance and transparency. The FRC review said that some companies claimed they had complied with the code in full, but when it had looked more closely at their annual reports, the FRC had found that they hadn't, or they had explanations that were incomplete or didn't wash. So while *Comply or Explain* had been around for many years, it was a concept with which we still had to grapple, said Liz. The FRC had set out two areas of concern: executive pensions and post-employment shareholding.

Executive pension contribution rates, or payments in lieu, had to be aligned with those available to the workforce and if companies did not comply, they had to explain why and give a timeline for becoming compliant. The IA expected companies to have dealt with existing directors' pension contributions by the end of 2022, but new director hires should be treated on the same percentage contribution rates as the workforce. Proxy agency IVIS said it would red top remuneration reports after 2022 if there was no credible plan to align executive pension contributions with the workforce and if executive pension contributions continued to exceed 15 percent.

The code had set out *post employment shareholding requirements* (PESR) and the remuneration committee had to work out a policy to cover both vested and invested shares. She explained how this issue was covered in the modern Long-Term Incentive Plan (LTIP), which was still the most popular, usually comprising a three year performance period, followed by a two year post vesting holding period (as demanded by the IA) and then by a two year post release retention period. The big question was how to enforce PESR once the director had left the company. Liz said that increasingly EBTs and other trustee vehicles were being set up in bigger companies to handle directors' post-employment pension shares, as nominee arrangements like this were easy to enforce.

Bradley Richardson, counsel at **Linklaters,** tackled '*The changing landscape of investor and corporate governance expectations.'* Since January 2019, under the Corporate Governance Code, large company directors had had to explain in their annual reports how they had been promoting the success of the company, the long-term consequences of their policies, the interests of their employees and how they had fostered relationships with suppliers and customers and explain the impact of their operations in their local communities. The new focus on the interests of employees not only involved asking whether they had been given the relevant info about the company's activities and whether the company had consulted properly but also, for example, whether the company promoted employee share schemes, said Bradley. Now there were mandatory reporting requirements too for larger private companies (those employing 2,000 or more, or a £200m+ turnover or £2bn+ balance sheet) too.

The pandemic had placed an acute focus on executive reward. Whereas the key phrase in executive reward used to be to align reward packages with shareholder interests, now the emphasis was on alignment with *stakeholder* interests, which included those of employees and customers. Institutional shareholders and the media wanted to know not just what the bottom line looked like, but how company boards had engaged with their employees, said Bradley. Companies were already undergoing a lot of scrutiny on executive pay and the likes of the Investment Association were sending, in some cases, stark messages to boards on reward packages, for example that bonuses should not be paid in companies which had taken taxpayer pandemic jobs support and loud advice that companies should bring executive pension contributions into line percentage-wise with those given to rank-and-file staff. Added to the mix was the required publication of the ceo v median employee reward ratio in companies having more than 250 UK employees, which was being widely reported by the media. Investor expectations were being cranked up, he said.

Many companies had felt obliged to update their malus/claw-back triggers too in the wake of several notorious corporate failures in recent years. On ESG, the FCA now required premium listed companies to make better disclosures on how climate was affecting their businesses. There were many inputs into corporate governance and they were developing at pace, he added.

John Pymm, md of executive compensation services at **Willis Towers Watson,** examined the theme of seeking leadership on executive pay at a time of uncertainty, with special focus on fairness, performance alignment and potential for change and bespoke arrangements. Executive pay had developed quite drastically as an issue in recent years. John displayed bar diagrams showing that the median direct reward package of ceos within Europe was *€3.4m* in the top 350 companies in 2019. Of this, 62 percent comprised variable pay – both short-term and long-term incentives. However, short-term incentives were aligned to performance, usually financial performance, profit, income etc. and the median level for short-term incentives was around 90 percent of base pay, but with stretching targets attached. These days, part of the pay out was deferred over a longer period, perhaps two-three years. In addition, there were the long-term incentives (LTIPs) with his bar diagram showing 126 percent as base salary as the median in 2019 (value at the date of grant) Typically, in a performance plan, it might be 50-60 percent of the full value of the award, so within UK market it might reach somewhere between 250-300 percent if all the performance hurdles, linked to the share price, were met over a three year period, with a two year retention period.

More than 60 percent of these top European companies had guidelines on employee share schemes too and so the level of executive compensation in those companies was partly affected by the degree to which executives engaged with Eso schemes, in the context of shares and share value, he said.

Covid was impacting some companies – falls in share prices, lower financial performance - more than others, like the tech companies, like Tesla, where share prices had gone though the roof. So the discretion exercised by remuneration committees and boards was most important, to make sure that awards were fair, said John. Cineworld had come up with a value creation plan, which was really all about trying to keep the company and its jobs alive. WTW had already seen shortened performance periods, quarterly in some cases, to concentrate companies' minds, especially those in trouble, maybe focussing on cash flow to ensure survival but he and colleagues generally were not seeing changes to in-flight incentives as boards were sensitive to how any such changes might be viewed.

The other key factor in the current mix was ESG, as witnessed by BP and Shell, who had both dramatically changed their business models to work towards net zero carbon emissions, said John: "*I am an ardent ESG person – we must change our organisations, otherwise our future will be much more difficult*."

He forecast new strategies to emerge for executive reward, performance pay and so on, in this accelerated period of change. A lot of discussion was in play regarding the role of ESG factors and risks in determining executive reward and how to strike the right balance between the narrative and the right level of reward. People had to think through what they were doing: If there were a seven year holding period for all executive incentive awards (five years within the plan plus two more in post holding), then companies would ask themselves – *Why are we seeking a listing on the LSE?*

The **third** day's webclave on employee share ownership opportunities for SMEs was genially chaired by **Professor Michael Mainelli**, executive chairman of the **Z/Yen Group**. Results from three of the day's online delegate vox pops were especially interesting: (a) 55 percent of voters said that employee share schemes were not necessarily good for every single company; (b) while 84 percent of voters agreed that there was still scope for the expansion of tax-advantaged share schemes, 16 percent said they had reached their limits in terms of taxpayer support and (c) 83 percent of voters thought there was a strong case for replacing executive cash bonuses with shares.

Colin Kendon, partner at **Bird & Bird,** explained why the **Enterprise Management Incentive (EMI)** scheme was booming. Lots of start-up companies needed EMI because their management teams needed incentivising every step of the way and yet most start-ups lacked the cash with which to offer high salaries to lure good staff away from their current jobs, said Colin. Latest HMRC statistics showed that EMI now cost the Treasury more in tax reliefs, with average gains of £83K on cash out, than any other UK tax-advantaged share scheme because it was so popular with 12,000 companies using it. There was no Income Tax, nor NICs to pay either on grant or exercise and only CGT to pay on share sales. In addition, user companies could get a Corporation Tax deduction. Yes, EMI reliefs were generous, but HMRC never published the other key numbers – how EMI produced successful companies which generated far more revenue for HMRC than the tax relief cost, which he described as "trivial." However, many companies were excluded from participating in EMI, either because they were worth more than £30m (*gross asset value*), employed more than 250 people, or because they were in disqualifying activities, such as financial services, forestry, property development or leasing. Colin said that he hoped that the government would look again at the leasing activity bar, because many companies were involved in leasing goods, which was an eco-friendly activity.

Although EMI imposed a £250,000 limit on the total value of outstanding options held by any one individual, this could be topped up via the award of additional options over growth shares, he said. Many EMI schemes he had set up for clients were *Exit Only* schemes, in which no options could be converted to shares and then sold unless there was either a company sale, or a change in control.

David Craddock, founder and director of **David Craddock Consultancy Services**, agreed that some EMI rules should be changed, particularly the ban on leasing. He knew of a scooter leasing company which was banned from using EMI, yet its business concept was eco-friendly – to lease instead of buy.

David talked about how SME companies were valued, in order to issue shares. He explained the meaning of market value – what the shares could be expected to realise on the open market and how valuation was affected by whether the shares were restricted or not. So the term 'market value' took account of any restrictions in place. The unrestricted market value was typically 10-15 percent higher than actual market value was the hypothetical value of the shares, were their restrictions – (*say)* on dividends, voting on shares, sale of shares, whatever, to be lifted. He then covered shares issued by *unlisted* companies, including the requirement that all relevant information (*most importantly, the percentage of total issued shares being sold*) about the shares had to be available to all prospective share purchasers from a willing vendor. Case law was very important in share valuation because it enabled us to interpret the statute, he said. There was a difference between the contracted value (of a share) and its tax value – its availability to any prospective share purchaser worldwide. The term *best price* meant the maximum price which the buyer was prepared to pay, rather than what the vendor was asking.

Discounts to share valuation often depended upon what percentage of shares were being sold because if less than 25 percent of the shares were on offer, then in most companies control would not be affected. So this would be a minority holding for which only the audited accounts need be presented. However, if more than 25 percent of the shares were being offered, then the vendor would be expected to produce management accounts as well as the audited accounts. Typically, the offer of a 50 percent holding in a company would attract a price discount of between 20 and 30 percent. David then examined the four main bases for share valuation – earnings, net assets, trading record (which HMRC always looked at) and dividend, but all these would be trumped, for valuation purposes, by a real life offer.

Garry Karch, head of EOT at employee-owned **Doyle Clayton,** told delegates that even though the Employee Ownership Trust had been very successful as the new kid on the block since its introduction in 2014, there was still a lot of work to do in order to bring up the EOT to its full potential. Doyle Clayton knew all about the process of converting to EOT status since his firm had converted itself to EOT status in the autumn of 2019.

In the EOT's early days, the most common structure was a 100 percent sale of the equity to the workforce by the vendor, but nowadays more vendors wanted to retain a minority stake in the businesses they had built up. The EOT was surely better than seeing the vendor selling to a trade buyer or private equity investor, said Garry. Instead, the EOT focus was on longer-term ownership and preservation of the company's independence and its jobs in local communities.

The biggest advantage of an EOT to the vendor was that the sale of a controlling stake to the workforce gave total CGT relief, though the exemption applied to only one tax year, he said. However, if an EOT company was sold off again quickly, the CGT relief would have to be repaid to HMRC. Another advantage of the EOT was that the trust could pay staff bonuses of up to £3,600 pa tax free. It was little known that employees in a less-than-100 percent EOT could apply, in certain circumstances, for EMI options, or they could set up a SIP, but in general, the major flaw of the EOT was that it did not provide employees with *direct* share ownership, rather it was designed as an indirect ownership model. "*This should be a key factor in helping to close the wealth gap*," said Garry: "*Changing the EOT structure to ease direct employee ownership of some of the shares would be top of my list for potential improvements in the scheme.*" His firm recommended that owners sold the full 100 percent to the EOT, not only so that they could get the maximum CGT relief, but because the EOT would then have more flexibility to establish an employee share scheme to provide incentives for staff.

While more banks in the UK were now willing to lend to support EOTs, the pandemic had reduced the willingness of lenders to finance cash-flow credit. He called on institutions, notably the British Business Bank, to provide at least partial loan guarantees in order to improve the financing of smaller EOTs.

Robin Hartley, senior consultant to the **RM2 Partnership**, who was joined by RM2 director **Sarah Anderson** on the panel, analysed the taxation and tenure problems facing Growth Shares - suggesting that share scheme malaise could be cured with synthetic exits (*financial engineering*). However, first off, Robin attacked the suggestion in the recent OTS review that employee gains from holding Growth Shares should come under the Income tax regime, and not CGT, as is currently the case. He said that the OTS suggestion "*struck at the heart of growth shares*" and he accused it of using a 'distorted' argument that growth share holders were somehow privileged, when that was not the case, as there were many circumstances in which investors bought growth shares. He accused the OTS of using a "misleading" set of case studies to back its argument, but he noted that the OTS had concluded that new legislation would be needed to enact its several proposed CGT changes and that meanwhile growth share gains should be charged to CGT.

In some companies, employees suffered malaise regarding share schemes – they had doubts about whether it would pay out, the complexity of some schemes, their inequality of bargaining power compared to an owner-founder who had to sign it off and possible disappointment over their rewards from past schemes. As gains from growth shares involved only the growth in company value above a certain hurdle, the current longer investment cycle – 5.7 years from seed rounds to exit, and a ten year VC cycle, was of great significance, not least because average employee tenure with the same firm was only 4.5 years and '*bad leavers'* would end up with nothing. How to overcome these facts and fears? – Answer: to get cash to growth share holders on a shorter time scale than was envisaged via a scheduled exit via pre-exit purchases of *some* growth shares. Complex planning, including inserting put options into Articles of Association, was necessary in order to avoid considerable tax charges, he indicated.

CENTRE WEBINARS

**Esop Sofa: hot topics in employee share ownership - newspad review* - April 20 2021 11:00 (BST).

In our next regular *newspad review* webinar, YBS Share Plans' Darren Smith and guest panellists discuss in depth, their pick of articles featured in recent editions of the publication.

** The role of employee share schemes in achieving the UN Sustainable Development Goals* - April 27 2021 15:00(BST).

Employee share schemes expert, David Craddock reviews his research on how Esops can help achieve UN SDGs.

MOVERS & SHAKERS

To mark St Patrick's Day, **Global Shares** planted a global forest, starting with 200 trees of seven species, including coffee, guava, macadamia and passion fruit in four countries – Columbia, Ecuador, Kenya and Tanzania. To achieve this, Global Shares teamed up with **Treedom**, so that every tree can be monitored from seedling to maturity. Eventually, the fruit of the trees will be given to local farmers, to supplement their incomes. Treedom calculates that over the next ten years, these trees will absorb 43,000 kgs of CO_2, enough to fill up 224 trucks.

Tania Bearryman is now executive director, risk & governance, at the **Intertrust Group**

Ashley Price left **YBS Share Plans** after for seven years in the front line, latterly as director of partnerships, during which time YBS entered the discretionary share plans and workplace savings markets.

UK CORNER

Centre's CGT campaign triumphs

More than 300,000 UK SAYE-Sharesave employee participants breathed a sigh of relief as chancellor Rishi Sunak pledged in his Budget small print to maintain the annual Capital Gains Tax (CGT) tax-free allowance of £12,300 until 2026.

Mr Sunak, who had received a report from the Office of Tax Simplification suggesting, albeit in the medium term, reducingthe allowance to between only £2,000 and 4,000, accepted Esop Centre advice to leave it untouched. Had he accepted, up to 300,000 SAYE employee shareholders would have found themselves grappling for the first time with HMRC tax forms covering their CGT liability on vested share sales.

In addition, Mr Sunak stunned financial advisers by refusing to order proposed rises in CGT charging bands when he published a sheaf of consultation papers on *Tax Day* (March 23). It was a further triumph for Centre lobbying and a slap in the face for OTS which had recommended that CGT charge band rates should be raised closer to corresponding Income Tax charge bands.

Members praised the Centre's campaign on feared CGT rises, which included writing directly to the chancellor warning him of the dire threat to the very existence of SAYE-Sharesave tax advantaged employee share ownership schemes, were he to slash the annual CGT exemption allowance.

YBS Share Plans summed up reactions: "*Fantastic to see that our biggest concern appears to have been averted. Given the severity of the potential impact I believe our collective work was time well spent so thank you for including us,*" said Peter Smith, future planning manager at YBS Share Plans.

"*We're delighted on behalf of the hundreds of thousands of working people who currently participate in SAYE- Sharesave by the chancellor's commitment to maintain the Annual Exempt Amount in CGT at – £12,300 - until April 2026.*"

"*Our data showed that 98 percent of employees who use Sharesave products do not exceed their annual allowance. We believe the lowering of the* *threshold proposed by the OTS would have delivered only a minor uplift in revenue for The Treasury but could have resulted in many lower-income employees having to complete a tax return for the first time. This added complexity could have had the unintended consequence of discouraging employees from becoming members of their employer's Sharesave plan,"* said Mr Smith.

Freezing the annual CGT tax-free allowance of £12,300 until 2026 means that any profits from annual share sales (held outside an ISA or pension) in excess of £12,300 will continue to be taxed at ten percent for basic rate taxpayers – and 20 percent for higher or additional rate taxpayers.

If shares are transferred to an ISA, no CGT is payable on the transfer or on the later disposal of the shares in the ISA. In addition, EMI options preserve their ten percent CGT charge rate privilege on exercise, subject to certain rules and conditions. Many small company owners, who recently either cashed out or created an exit event to avoid what they thought would be swingeing increases in CGT, will feel very miffed that the chancellor did **not** touch existing framework for CGT charges.

In freezing the AEA at £12,300 for individuals and personal representatives and £6,150 for trustees up to April 6 2026, however, the Treasury was forecasting an extra CGT yield of *£30m* across the board, including tax on gains made by private individuals on their investments.

The OTS, while recognising that there were good social policy reasons for promoting share plans (*particularly all-employee schemes such as SIP and SAYE*), had questioned in its CGT review whether they were the most cost effective approach to helping people save or encouraging long term share ownership. It said: "The CGT AEA (annual exempt amount) clearly distorts investment decisions. Around 50,000 people report gains annually close to the threshold and so 'use up' the annual exempt amount as if it were an allowance – which is particularly easy for holders of listed share portfolios."

Call for evidence on EMI's future: The Treasury issued a call for evidence, with the objective of gathering more information to better understand whether the **EMI** scheme should be extended to include more companies. The chancellor seeks evidence-backed views on:

*Whether the current scheme is fulfilling its policy objectives of helping SMEs recruit and retain employees.

*Whether companies which are ineligible for the EMI scheme because they have grown beyond the current qualification limits are experiencing structural difficulties when recruiting and retaining employees.

*Whether the government should expand the EMI scheme to support high growth companies and how best to do this.

*Whether other forms of remuneration could provide similar benefits for retention and recruitment as EMI for high-growth companies.

The deadline for responses is **May 26.** The EMI scheme is a much valued arrangement for qualifying companies, ideally suited to high-growth companies. There are, however, technical aspects and areas of HMRC practice which could helpfully be clarified (including notifying restrictions and working time declarations), particularly if the scheme is to be widened out.

Examples of occupational sectors which do not qualify for the award of EMI options include: leasing, farming, financial activities and property development, but leasing should not be an EMI barred occupation, **Colin Kendon** of Centre member **Bird & Bird** told the *Newspad share plans symposium. (see earlier story).*

HMRC confirmed late last year that the favourable EMI tax treatment would be preserved for option holders who were on furlough or working reduced hours due to the pandemic. An extension of the time-limited measures for furloughed EMI option holders was granted in the Spring Budget: these measures are being extended, until April 5, next year. This will apply both to existing EMI option holders and in circumstances where new EMI share options are to be granted to employees who are on furlough or working reduced hours due to the pandemic. The **RM2 Partnership** said that EMI was the go-to/gold standard as far as employee share option schemes were concerned for those companies who could qualify. "*Any initiative around expanding the scope of EMI is we think extremely worthwhile. We would strongly encourage anybody who has something to say on EMI and its benefits as well as ways it can be improved/extended to contribute to the consultation process.*" added RM2.

*The Centre plans to submit evidence on EMI to the chancellor, based on the views of advisers. Advisers who are sending their views on EMI direct to the chancellor are asked to send a copy of their evidence to the Centre too. Please send your thoughts on how EMI might be changed for the better (not more than two pages) with supporting evidence to Juliet_Wigzell@zyen.com at Centre HQ.

*The chancellor may soon levy a NICs increase on freelancers. After unveiling a grant scheme that will cover 80 percent of freelancers' earnings up to £2,500 monthly if they are struggling to pay bills due to the pandemic, Mr Sunak hinted at a planned increase to NICs for the five million self-employed, to bring contribution rates in line with employees. He said it was becoming increasingly difficult to justify the inconsistent contributions of those who work for themselves compared to employees. "*If we all want to benefit from state support, we must all pay equally in future*," he said. Currently, a self-employed individual pays three percentage points less in NICs on profits up to £50,000 compared to employees.

Private investors shut out from flotations

During the three years starting October 2017, private investors were able to take part in only 24 out of 352 floats on the main FTSE index and AIM – less than seven percent, said Ben Marlow writing in *The Telegraph.* These days, listings tend to be the preserve of City fund managers, he added. The significant presence of both employee and private investors in a quoted company's share register helps stabilise share prices, by tending to reduce the risk of sudden rises or falls in the market. In addition, when companies float, there tends to be a short term boost in the share price before it settles at the appropriate level. Too often these days however, private investors miss the chance of an immediate gain during flotation because they are not invited to participate in it.

CORPORATE GOVERNANCE

ESG evicted at yoghurt maker: Sustainability and ESG (Environmental, Social and Governance) at **Danone**, the world's biggest yoghurt maker, were thrust aside when activist investors ganged up on non-executive chairman Emmanuel Faber and had him thrown out. Artisan Partners, London-based hedge fund Bluebell Capital Partners and allies had already stripped him of his ceo post and his '*fingernails*' post as chairman lasted barely a fortnight after they halted his ESG programme. When Mr Faber became Danone's ceo in 2014, he committed his company to "*One Planet One Health*" - doing business to deliver "*healthier eating and drinking, responsible business stewardship and sustainable value*." The strategy was to implement regenerative agriculture to produce its dairy and plant-based products. It delivered early life and advanced medical nutrition, and sought to "*align with global consumer trends towards healthier nutrition and food produced in a sustainable manner*." However, the hedge funds moved before *The Club of Rome* had time to properly mobilise to save him. In a recent article entitled: *Hedge Funds versus Visionary Leaders,* The Club of Rome said: '*The fight now raging at Danone is not only over the employment of one man, it is over the soul of the corporate world. Those of us who believe that companies have a vital role to play in transforming our current broken economic model and crafting a finer future must rise up to defend corporate leaders who share our vision and are willing to commit their companies to this work. All who care should shift our own investments into companies that foster social and environmental values. We should call out predatory activist investors and boards."*

Faber insisted that he had huge employee support, including three North American trade unions, for his policies, despite slumping sales and a falling share price. The £35bn company has been under siege by activist shareholders for some time. Last year, Faber guided Danone's change in legal status – to that of a purpose driven company. "Entreprise à Mission" was introduced by the French government requiring companies to *act in the best interests of consumers' health and the environment.* Faber believed in the importance of sustainability and ESG within organisations and had incorporated these concepts into Danone's structures. The impact of the pandemic had forced him to axe 2,000 jobs recently.

Alas, when the hedge funds struck, the group employee stock ownership plan held only 8.67m Danone shares – equivalent to just 1.3 percent of the issued equity – not nearly enough to give him any protection. Two years ago, as part of the public launch of its 2030 goals, Danone announced its *"One person, One voice, One share*" programme, under which each employee was granted one Danone share, combined with an annual dividend-based incentive scheme. Danone launched a global employee share subscription plan too in 2019, offered to half its 100,000 employees worldwide, but too late to help stop the defenestration of Faber.

Despite the rising power of the corporate governance agenda, most investors still want a ceo who will drive their profits and to excise any part of the company that is not returning high margins and to dismantle any programme that is not solely focused on growth and profit in the near term. However, investor aggression can go very wrong: In 2015, investment firm 3G and Warren Buffet spent $50bn to combine **Kraft Foods** and **Heinz**. They imposed "ruthless efficiency," cut overheads from 18 to 11 percent closed factories and axed jobs. In 2017 the team, proposed to do the same thing to **Unilever**, which rejected the so-called *friendly* offer, and stayed the course in its commitment to sustainability, humanistic management and using the company as an agent for social change. By early 2019, Kraft Heinz was forced to write down $15.4bn, cut its quarterly dividend and deal with an SEC investigation. In 2020 it wrote down another $2bn. Its 2020 net income/loss for the twelve months ending December 31 2020 was minus $1.202bn, a 124 percent decline year-over-year, compared to 2011, a losing trend that has persisted since 2017. An investment in Unilever, by contrast, would now be worth four times an equal investment into Kraft Heinz during this time frame. Over the ten-year tenure of Paul Polman at Unilever, shareholders enjoyed returns of 300 percent, said the Club of Rome article. Nevertheless, this major reverse at Danone will make ESG crusaders pause in their tracks…

*Research by Centre member PWC and London Business School revealed ESG measures have reached widespread adoption in the setting of executive pay. Data from *The paying well by paying for good* report found the measures were now being used in approaching half (45 percent) of all FTSE 100 companies' pay strategies. The most common use of ESG indicators was to calculate either annual bonuses or long-term incentive plans (LTIPs), according to the study. Just over one-third (37 percent) of organisations polled reported using such a measure in their bonus plans, with an average weighting of 15 percent. Meanwhile nearly one in five (19 percent) said they included them in their LTIP with an average weighting of 16 percent. Responding to the findings, Phillippa O'Connor, reward and employment leader at PWC, said: "What we're seeing is an explosion in interest from investors and companies alike in linking executive pay to ESG targets. This is now feeding into practice, and very soon we'll be in a situation where a majority of large companies have ESG targets in pay."

Further reform: The government plans to make it easier to claw back bonuses paid to executives of failed companies in a major shake-up of the UK's corporate governance rules, with ministers vowing to target negligent auditors and rogue directors. The rules would be updated to ensure that directors' contracts include provisions, already in place in banks, to claw back past bonuses and stop future payouts if companies collapse or serious failings are identified. Ministers plan to widen the net of companies affected by corporate governance standards, to include the largest privately owned companies and quoted companies which currently enjoy lighter disclosure requirements on the AIM market. The boards of all companies with more than 2,000 staff, or a balance sheet worth more than £2bn would be covered by the new rules. In addition, directors of companies with more than 500 staff and a turnover of more than £500m would be held liable for accounting failures. Directors would have to disclose more justification for dividend payments or big executive bonuses and such new rules would force larger companies to make annual *resilience statements* detailing business risk, including climate risks.

The UK's rules on financial reporting and corporate governance have been under the microscope after the failures of BHS, the department store sold off by Sir Philip Green, outsourced services company Carillion, and Thomas Cook, the collapsed tour operator. The rule changes would be overseen by a new Audit, Reporting & Governance Authority (ARGA), which would replace the Financial Reporting Council. The consultation, which runs for 16 weeks, re-activates previous proposals to overhaul the auditing sector, which failed to protect against bankruptcies. Large companies would have to hand part of their work to smaller auditors outside the big four accountants under the proposals. Those auditors –Deloitte, EY, KPMG and PwC – could face a cap on their market share among FTSE 350 audits if competition in the sector did not improve, ministers warned.

Executive reward issues: In the wake of the Covid pandemic, executive reward has come under a sharper spotlight, as employees have been furloughed or made redundant. In its regular client bulletin, Centre member Linklaters warned: "Boards must be ready to explain and justify their decisions on executive pay to shareholders, investors, regulators, employees and the wider community. Reward is increasingly being measured against companies' ESG and sustainability performance. Businesses participating in the government's Covid Corporate Financing Facility and Coronavirus Large Business Interruption Loan Scheme are subject to express limitations on pay rises and cash bonuses for executive and senior management pay, but quoted companies will be under close scrutiny on their executive pay response to Covid-19. Investors – particularly those who have suffered from reduced dividends and share price volatility – will be watching carefully. There would be public interest in the extent to which executives have *shared the pain* suffered by employees, especially in companies which benefited from state aid. For example, the Investment Association (IA) said that, where companies have received Covid-19 related support, save for truly exceptional circumstances, executives should not receive any annual bonuses for the 2020 or 2021 financial years.

"Companies therefore needed to take great care to explain clearly their thinking on executive pay in any new policy reports and in the annual pay reports presented to agms this year. Indeed, if the pandemic's impact on a company is significant, remuneration committees should consider carefully whether it's the right time to change remuneration policies substantially. *It may be better to wait until the future market environment for the company is clearer*. Investors will continue their focus on levels of pension contributions, discretionary powers, malus and claw-back triggers, appropriate performance metrics, and post-employment shareholding requirements. Most companies will be disclosing their ceo:UK employees pay ratios for the second time and will have to explain for the first time any changes in that ratio. Measures taken to respond to Covid-19 could skew either side of the ratio, and companies should explain carefully any likely "aberration" in emerging trends. The FRC said it would like to see improved reporting and more detailed disclosures on some remuneration aspects and that continued poor behaviour would be "*called out.*" Companies should consider carefully the Corporate Governance Code requirements. Sustainability and ESG continue to be an area of focus.

"The FCA recently confirmed that premium-listed companies must make better disclosures from now on about how climate affects their businesses. This is likely to increase pressure to align variable remuneration against relevant sustainability metrics. Investors have indicated that they expect highly carbon-sensitive businesses to include climate-related metrics in the calculation of executive incentives. As with any other performance condition, companies need to demonstrate the linkage with implementing strategy. Remuneration committees are increasingly expected to disclose how they have taken into account ESG matters when deciding on payouts."

***Fidelity International**, the £400bn pension giant put corporate boards on notice that they would face investor revolts if they tried to pay bonuses after taking taxpayer support, setting the scene for a stormy agm season. Fidelity wrote to FTSE 350 companies saying it wants to see "*a restrained approach to executive pay this year*" and warned that it would vote against bonuses for bosses whose companies had used schemes such as furlough without repaying the money. The Fidelity letter followed a warning from the IA, suggesting boards could face unrest on the scale of the first *Shareholder Spring*. There have been rows already over use of taxpayer funds, with Tesco repaying £585m. Companies who award generous pay packages to executives while taking government aid, reducing dividends or cutting jobs during the pandemic could face a shareholder backlash, according to Germany-based asset manager, **Allianz Global Investors,** which manages £503bn worth of assets. It warned it could use its shareholder powers to vote against pay awards during the upcoming agm season. It said it would scrutinise "generous pay proposals on a case-by case-basis whenever companies received substantial direct state aid, substantial layoffs were recorded or dividend cuts happened … as a result of the Covid-19 pandemic."

*Former London Stock Exchange chief **Xavier Rolet** called for directors' interests to be better aligned with those of shareholders by awarding them substantial equity grants which vest over long periods, rather than cash payments annually. He said that an established framework of directors' equity grants would tend to attract business people with good corporate track records, rather than "*establishment types*," more interested in the job prestige and image, than anything else, he claimed.

Risk of TUPE changes

While the government swiftly denied rumours that it would review job protection and employee rights, the legislation most likely to come under scrutiny is that surrounding the *Transfer of Undertakings (Protection of Employment) (Tupe) regulations.* EU law requires that any organisation acquiring the staff of another has to honour the terms and conditions, including holiday, pay and other benefits, of the incoming employees in full. While the intention was to protect staff, for years this particular rule has attracted criticism. Particularly disliked by firms is the fact it allows for large discrepancies to exist between old and newer staff; differences that are often significant when private organisations take on public sector employees, said lawyers *Winckworth Sherwood*. The UK and EU had reached a last minute agreement on the Trade and Co-operation Agreement, which made specific mention of workplace rights and provides that these are not to be weakened below the level they were at when the UK left the EU. However, agreements preventing the dilution of these rights are only binding in as far as *they do not impact trade and investment between the EU and the UK.* So, the onus would be on the EU to prove that any changes made by the UK, for example in allowing terms and conditions to be harmonised after a Tupe transfer, had a material impact on trade and investment. Even though the EU is highly likely to disapprove of anything that could be seen as giving the UK a competitive edge, *it is not clear how a material impact on trade and investment will be determined if changes to Tupe were presented*. There may well be changes to UK employment legislation that the government would feel able to make without fearing remedial action on the part of the EU. There may be other rules that could be looked at, such as how to calculate holiday pay (*EU rules requires this to be based on 'normal remuneration' which can include bonuses and overtime),* and rules around accrual of sick pay during long-term absence or maternity leave, which businesses have had to adjust to as a result of EU rulings**.**

IR35 sucks in private sector firms

The government confirmed that, from April 6 this year, the scope of the Off-Payroll Working Rules **(IR35**) would be expanded to cover medium and large private sector organisations, employment agencies and third parties within the labour supply chain. HMRC published a policy paper in which it emphasised the active position it would be taking in supporting organisations in: complying with their IR35 obligations; monitoring compliance; yet taking action against organisations that had deliberately failed to discharge their obligations under the new rules. HMRC accepted that mistakes would be made when using these processes for the first time and would provide support to help organisations to identify and correct them. However, organisations must make meaningful good-faith efforts to discharge these obligations, as it would not be as supportive or forgiving of those that have deliberately failed to comply with the rules (whether through action or inaction), said lawyers *Vedder Price*. If they had not done so already, all relevant organisations should be taking positive steps towards IR35 compliance as soon as possible, including: *Auditing contingent workforce and reviewing labour supply chains. Who are the contractors and how are they engaged (e.g., directly, through personal service company or umbrella)? *Assessing the impact of the new regime, identifying their responsibilities in relation to existing contractor relationships and carrying out employment status determination statements (SDSs) where needed. Do engagements need terminating, or renegotiating? Do working practices and arrangements need to change? *Implementing compliance processes going forward.

Lies, damn lies & statistics

Recent claims by the Office for National Statistics (ONS) that UK weekly pay growth reached its highest rate for two decades in 2020 were too good to be true, according to The Resolution Foundation think-tank. Its latest quarterly earnings outlook found that half of all employees actually experienced a pay cut last autumn. The Foundation claimed that compositional changes in the workforce, such as hundreds of thousands of lower-paid employees losing their jobs and thus no longer being counted, had skewed the ONS statistics which claimed that nominal average weekly earnings growth reached 4.5 percent in late 2020. In fact, pay growth among lower-paid employees fluctuated between 0.2 and 1.4 percent between April and December, which amounted to a pay cut in real terms, said the Foundation.

COMPANIES

***BP** refused to disclose the value of the share awards which ceo Bernard Looney told staff would involve more than 60,000 employees in 66 countries who would thereby share in BP's future. About 5,000 people in senior management will receive share *options,* enabling them to buy shares at about present prices in four years' time and thus benefit from any increase in the share price. All other permanent staff will receive shares outright, which will be locked up until the first quarter of 2025. Its first time share offer to all employees aims at engaging them in the *green* transformation that the group undertook after a difficult year due to the pandemic. The news was announced during a virtual seminar: "*Whether you are a waiter in a coffee shop in New Zealand, a well drilling engineer in Azerbaijan, a mining employee in South Africa or an analyst in India, more than 60,000 people in 66 countries will be part of BP's future*," said Looney. BP stressed that the share offer was about linking its employees to the company's "success" in what it seeks to be "green" and less dependent on hydrocarbons. Its investment in low-carbon energy resources will increase tenfold by 2030, with a focus on wind energy. The distribution of the free shares will take place throughout this year. The cost of the programme was unclear but BP said it would not impact its $2.5bn cost savings target or plans to reduce debt to $35bn this year. It intends to offset any shareholder dilution resulting from the plan. BP laid off around 10,000 employees, 15 percent of its global workforce, as part of Looney's plan to increase renewable power capacity 20-fold by 2030 while reducing its oil output by 40 percent in a drive to cut greenhouse gas emissions. BP is expected to return to paying bonuses to around 30,000 employees this year after suspending all bonuses last year in response to the collapse in energy prices. Last year BP changed its bonus policy to be measured in future solely on company performance, rather than by division or personal performance. The company suffered a net loss of $20.3bn in 2020, but expects recovery in 2021 thanks to crude oil prices, which have risen sharply. In addition, UK staff will get a four percent pay rise. Mr Looney received total reward of £1.7m last year, including his salary of £1.18m and shares worth £315,000. He donated 20 percent of his salary to mental health charities.

*Creative agency **Brand Opus** converted itself into employee-owned status, following its sale of founder shares to staff via an employee ownership trust (EOT). The agency, which consults on branding for Carling, Kraft Heinz, and Molson Coors, will create an *employee council*, which will give staff a permanent platform to become more involved in business decisions. Nir Wegrzyn, founder and ceo of Brand Opus, said: "*We started reviewing the future of the business back in 2019, where we explored everything from equity release to a complete sale of the agency. The EOT model quickly became our favoured option because it enabled staff to become more invested in the business, and be involved in its future trajectory."* Brand Opus is releasing 100 percent of its shares to the EOT, which means that shares will not be owned by individual staff members at any point, but by the trust itself. Wegrzyn added: "*In the event of a sale, shares will be distributed based on three elements: length of service, levels of remuneration and type of hours of work – part-time or full-time"* The executive and leadership team will remain in place following the transition, while all former partners will become employees. These changes were effective immediately and involved all 62 employees worldwide. "*We have a culture of doing things differently here. The EOT gives us the opportunity to unlock value within the business without losing everything that makes the agency so special. People have always been at the heart of what we do, and so this is a natural evolution of our founding ethos*," added Wegrzyn.

*Almost 60,000 frontline workers at **BT** will receive a special bonus of £1,500 in cash and shares in recognition of their work during the pandemic. The telecoms group said it would give 59,000 staff a £1,000 cash bonus, which they will receive in June. In addition, the employees – who include engineer and customer service centre staff – will receive a further £500 in shares, which will vest after three years as part of the employee share scheme. The bonus award will cost BT about £110m, and the company said the payments represented about five percent of the average employee's salary. Ceo, Philip Jansen praised the employees who had kept customers connected during the Covid-19 crisis, millions of whom have spent the last year working from home. "BT has made a massive contribution to the national cause over the past year: we've supported the NHS, families and businesses and avoided the use of redundancy or furlough in our response to the pandemic," Jansen said. "Our frontline colleagues and key workers have been true heroes, keeping everyone connected in this most difficult time." BT made a £500 share award to all 100,000 staff in June last year for the same reason. However, the new bonus announcement came amid a pay freeze at BT and the threat of the first national strike at the company since 1987 in a row about planned job cuts and site closures.

*British online car retailer **Cazoo** is making its stock market debut in New York though a special-purpose acquisition company (Spac), after agreeing to a merger deal valuing it at $7bn (£5bn). Cazoo is set to merge with **Ajax I**, led by the billionaire US investor Dan Och, becoming the latest company to take advantage of Spacs, which are *blank cheque* companies, offering a cheaper, quicker way for a private company to join a stock market, though they seldom have room for employee share schemes. The news upset the City and London Stock Exchange, which wanted the car retailer to list in its home market. The government is racing to update UK listing rules to sex up London as a more attractive place for start-ups and high-growth companies to list. The deal is expected to provide Cazoo with up to $1.6bn in funding to fuel its growth and expand its operations across Europe. Cazoo, which employs 1,800 people in the UK, Germany France and Portugal, said it is expecting revenues of up to $1bn for 2021, a 300 percent jump compared to a year earlier. The deal delivers a $1.35bn windfall for *Daily Mail* owner **DMGT,** which is a shareholder in Cazoo, having originally invested £117m in the business.

*Door-step delivery company **Deliveroo**'s heavily hyped flotation left an estimated 70,000 customers who bought its shares nursing paper losses of 26 percent on day one of its provisional listing. Knowledgeable investors tend to assess whether it is better to go into the IPO aftermarket to pick up the shares at a cheaper price than the IPO price.

A novel feature was that regular customers could buy up to £1,000 worth of its shares in a '*Burger/Pizza for Shares'* offer. Any employees who bought the shares too were in the same boat. Founder and ceo Will Shu cashed in 6.7m shares at *the initial £3.90 offer price*, worth £26.1m, but at close of play, the shares languished at only 287p each, a total paper loss of £2bn from the float price. Deliveroo cut its payroll by 673 last year to stem heavy losses, now employing slightly more than 2,000.

*Employee share ownership fan FTSE250 Insurer **Direct Line** is giving £350 worth of its shares to each of its 10,800 employees, as well as a cash bonus of £400 each, while announcing a share buyback worth up to £100m. It reported an 11.4 percent pandemic induced fall in pre-tax profit to £451m.

***Halfords**, the specialist car parts and cycles retailer, repaid more than £10m in government furlough payments, thanks to a surge in demand for bicycles during the pandemic. The rise was linked to people choosing to cycle short distances rather than using public transport during the current and previous lockdowns. After it became one of a small number of businesses to be granted essential retailer status, it had been under pressure to return furlough money received. Its statement revealed the business is now eying up underlying profits of around £90-100m for the current financial year, up from £56.2m in the previous year.

*The trust-owned **John Lewis Partnership** (JLP) confirmed that it had scrapped its annual all-employee cash bonus for the first time in 67 years. Even before its recent dismal results, the pandemic had forced JLP to close eight department stores and several supermarkets last year, cutting more than 1,500 head office jobs in the process. JLP set up one of Europe's first employee benefit trusts in the 1920s, though staff only own one symbolic share each. It posted a loss of £517m for the year to January, against profits of £146m the previous year, due mainly to pandemic-related lockdowns that forced shops to shut. JLP then signalled that eight more of its 42 stores would be closed, with the loss of up to 1465 jobs, to cut costs further.

***London Stock Exchange** ceo David Schwimmer scooped up £6.9m in total reward last year, up 176 percent from the previous year, after the LSE completed its £20bn acquisition of data king **Redefinitiv.**

*Online furniture seller **Made.com** is planning a stock market float by early summer.

The employee shares friendly company founded 11 years ago in Shoreditch by Ning Li and Chloe Macintosh could be valued at around £1bn.

*Luke Ellis, ceo of listed hedge fund giant **Man Group,** gave his annual cash bonus to charity. Ellis, whose total reward for 2020 was $5m (£3.6m), donated his $954,686 cash bonus to good causes, according to the company's annual report. Man Group delayed plans to overhaul executive pay to avert a potential row with shareholders too distracted by Covid-19 to discuss the new arrangements. The FTSE 250 company, which manages $123.6bn, had wanted to bring forward the timing of some bonuses and delay others. This would have enabled Mr Ellis to earn a potential short-term bonus of 300 percent of his $1.1m salary, up from 250 percent.

*Digital banks **Monzo** and **Revolut** both offered employees the opportunity to purchase shares in their businesses. Neither firm is listed so employees will have to wait for a set period until they can sell to other investors in a future funding round.

*The chairman and ceo of **Nominet** were ousted from their posts after an EGM shareholder vote. Five of Nominet's 11 directors were voted out after boardroom rows over executive reward and falling charitable donations. Members of Nominet act as shareholders of the internet registry service which provides ten million .uk domains.

***Ocorian** acquired **Emphasys Technologies (ET)**, marking Ocorian's entry into the US, to provide a foundation for the Group's capital markets services suite. Emphasys Technologies provides those services, leveraging its in-depth experience of modelling asset backed transactions and related tax returns, as well as its proprietary software. ET was founded in 1988 by Jeff Stone. Ocorian believes that Emphasys' capabilities will be highly complementary to its capabilities around the set-up and administration of special purpose vehicles (SPVs) in the US, as well as for its franchises in the Cayman Islands and Bermuda, which provide corporate and capital market services to structured credit product clients. It will be business as usual for ETs' employees and clients, said Ocorian chairman **Frederick van Tuyll**. In addition, Ocorian acquired the *Guernsey*-based consultancy, **Platinum Compliance**, which provides regulatory solutions to help clients manage their obligations. Following the acquisition of Platinum, Ocorian will provide end-to-end admin services and a suite of compliance and regulatory services in Guernsey. The acquisition increases the depth and breadth of its offering to asset managers and other clients who operate in the regulated Guernsey market. It builds Ocorian's compliance division further after its acquisition of Newgate Compliance last December. "*We know our clients have a growing need for compliance services and we are looking forward to working with founder Lindsay Fox and the whole team at Platinum to expand our funds and regulated client service offering in the Guernsey market,"* added van Tuyll.

***Personal Group** awarded 250 employees free shares worth £500 under its new share incentive plan (SIP). The shares award was to recognise employee benefits firm employees for their hard work during the pandemic. Effective as of last December 1, employees who had joined the company before June 2020 will have their shares held in trust in accordance with the SIP plan rules. The plan allocates £500 to each eligible individual to be held in trust by Personal Group trustees - the first time shares have been offered beyond the senior management team.

*The top two executives at **Serco,** one of the companies behind the government's £37bn *test-and -trace* scheme, received total reward worth £7.4m for 2020, including bonuses worth £5.5m. Ceo Rupert Soames, and cfo, Angus Cockburn were paid in a combination of cash and shares for the calendar year. Although their reward was slightly less than what they earned in 2019, the scale of these payments raised eyebrows, midst discontent over Serco, which has been criticised for still paying dividends, while reaping the rewards of government Covid-19 contracts. Soames was paid £4.9m in total, taking his earnings from the outsourcing firm to £23.5m since he joined in 2015. Cockburn was paid £2.4m. Details of the awards came on the day that the government's spending watchdog said there was no evidence that the test-and-trace programme in England had helped reduce pandemic infection levels. The government has already spent £22bn on the scheme, and the Budget included an additional £15bn for *Test and Trace*, taking the total bill to more than ***£37bn*** over two years – equal to £550 for every man, woman and child in the UK.

*Medical communications company **Synergy Vision** became employee-owed, after transforming itself into an Employee Ownership Trust (EOT). It became employee-owned on March 2, after founder Ffyona Dawbar transferred 87.5 percent of the firm over to the EOT. Dawbar said: "*The move was a natural one for us really. I'd been eying up my own exit from the business in ten years time, but selling up just didn't feel right and it didn't seem to fit in well with the values we've built up."* She added*: "We're a people business, and what we sell is the skills of our people, but fundamentally, we wanted staff to be part of the success of the future business*." Under the EOT agreement, all employees own a proportion of the business (determined by length of service), with a profit-related bonus paid out according to their percentage. Staff only 'own' part of the business while they are working there and *do not take any shares with them if they leave.* For the time being, the annual bonus will be small, because the business took out a loan out against its value to the EOT and part of the profits will be used to repay this, but once it is paid off in full, payouts will get larger. Dawbar said: "*We can already see how it's changing the engagement of our staff. We've previously been approached by firms wanting to buy us, but all they tend to do is strip the company down and take your clients without really caring for the staff. This was something we didn't want to happen*." Of the remaining 12.5 percent, Dawbar has ten percent, with 2.5 percent belonging to coo Eileen Gallagher. Synergy Vision employs 60 staff in offices in London, Dublin, and Sydney.

WORLD NEWSPAD

China: Ant Group told employees it would eventually go public and promised to help those who need to monetise their shares sooner, seeking to boost morale four months after Chinese regulators torpedoed the fintech giant's blockbuster listing. A "short-term liquidity solution" for employees will take effect this month, Ant Chairman Eric Jing said in a posting on the company's internal website, reported *Bloomberg.* Ant suspended a share buyback programme for current and departing staff in July to prepare for an IPO, but has so far struggled to revive the programme in part because of inability to price the shares. The future appeared even more clouded after Ant ceo Simon Hu resigned suddenly "for personal reasons." Some Ant employees, who joined the company in the run-up to the planned IPO, have quit rather than hold out for a revival of the listing. Others have stretched personal finances after buying cars or paying deposits on new homes in anticipation that the IPO would be a success. While employee holdings would have been subject to a three-year lockup had Ant's listing gone ahead in November, many had anticipated the stock's value would continue climbing after the IPO, but not anymore. Many of Ant's 16,000-plus employees were granted restricted stock options known as Share Economic Rights (SERs), each representing 5.53 shares. The awards, which account for a significant portion of total compensation for some employees, are usually subject to a four-year vesting schedule, with 25 percent free from the lockup upon the first anniversary and 25 percent every year thereafter. Before Ant's buyback programme was halted, departing employees would sell shares back to the company at a valuation in line with the company's most-recent funding round, while existing employees could participate in periodic buy-back rounds. Ant was valued at US$150bn in a 2018 financing. Outstanding SERs totalled 114m at the end of June, according to the latest data disclosed by Ant. Jack Ma's company, which operates super Chinese electronic payments app Alipay, was still under the cosh as regulators sorted through details of a fintech industry overhaul that led to the abrupt suspension of Ant's $35bn IPO in November after Ma delivered a blunt speech criticising national regulators, reportedly infuriating President, Xi Jinping. The hazy outlook raised the risk of employee discontent: Ant fears more departures after it pays bonuses this month. Few doubt that the company's prospects have worsened dramatically since China began tightening regulations on the fintech industry, but the opacity surrounding the new rules has made it difficult to put a number on the damage. Beijing then ordered e-commerce company **Alibaba** to sell off media assets including Hong Kong's South China Morning Post (SCMP) as the Chinese government cracked down on the growing public influence held by the country's sprawling tech conglomerates. Later, there was speculation that regulators were preparing to hit

Alibaba with a record fine in excess of US $975m over anti-competitive practices.
Meanwhile, other Chinese tech giants who compete with Jack Ma's businesses for talent have seen their shares soar in recent months, generating *big gains for employees with stock options.* Though arch-rival **Tencent** climbed about 16 percent in Hong Kong trading, its founder, employee shares fan, **Pony Ma** was being targeted by the Chinese authorities too. E-commerce giant Meituan jumped 25 percent and Kuaishou Technology surged 173 percent after its February listing, profiting from the Ant Group's woes. The FT reported that China's central bank was unhappy with the company's progress on requests to share more consumer data with the government. Ant declined to comment. The company's likely solution for employees will be to buy back some of their shares, Dow Jones reported.
France: Cityscoot and other members of the *Next 40* are organising the pre-Exit sale of employee shares as is often done in Silicon Valley, reported the French financial journal *Les Echos*. The subject, taboo for years in France, is gaining momentum and new players are positioning themselves to organise this secondary market. It's still a distant noise. Few are willing to talk about it, but a growing number of French scale-ups organise the sale of shares - via the BSPCE tool (company creator share subscription warrants) often- held by their founders, employees or business angels. This mechanism is modelled on Silicon Valley, where the approach is structured through tools like Carta, Forge Global, or via dedicated investment banks like SharesPost or Manhattan. Cityscoot is organising an operation allowing former employees to sell their shares in order to engage in entrepreneurship. A person close to this electric scooter rental company explains that it is a question of responding to *"a philosophical conviction of the founder. It is a way of giving back to those who have accompanied him and have been faithful to him by facilitating the transfer of their shares."* To orchestrate this sale, entrepreneur Matthieu Stefani created DealCab (which will soon be renamed FaiShares), a platform where he connects sellers and buyers. *"This secondary market is one of the challenges of the moment,"* he said. '*All unicorns have employees with virtual fortunes that they cannot make liquid and problems over leaving former employees (whose management no longer wants them) in the shareholding mix."*
Balderton Capital, the British VC led by Frenchman Bernard Liautaud created Liquidity One in 2018, a fund to buy back shares from founders, employees and investors of start-ups in the secondary market. In two and a half years, it has allocated a global envelope of $145m for fifteen companies, among them, Darktrace, Graphcore and Omio. *"In Europe, it is a complicated market to organise because the regulations concerning shares are very different from one country to another,"* explained Daniel Waterhouse, partner of the British fund. Now, voices are being raised to further facilitate this injection of liquidity for company employees. Marc Menasé, founder of Founders Future and former entrepreneur explained: *"A start-up employee who wants to buy an apartment and who owns shares worth several hundred thousand euros cannot turn to his/her banker, who will not know how to value that. We must therefore give employees perspectives so that the fruits of their efforts can be transformed when they need it."* The government boost to start-up employees, the BSPCE tool which organises the participation of employees in company shareholding is most widely used within the French ecosystem. Adapted for founders, it remains difficult to operate for employees who, when leaving a company they have helped to build for several years, tend to abandon these shares. According to a specialist who is preparing to enter this secondary market with a buy-sell platform, 75 percent of French Tech employees lose these BSPCEs.
US: Goldman Sachs' ceo David Solomon will get a $10m (£7.3m) pay cut for the bank's involvement in the 1MDB corruption scandal. 1MDB was an investment fund set up by the Malaysian government that lost billions due to fraudulent activity. The global web of fraud and corruption led to a 12-year jail term for Malaysia's ex-pm Najib Razak which he is appealing against. Goldman condemned its involvement in the scandal an "*institutional failure*". It helped raise $6.5bn for 1MDB by selling bonds to investors, the proceeds of which were largely stolen. Prosecutors alleged that senior Goldman executives ignored warning signs of fraud in their dealings with 1MDB and Jho Low, an adviser to the fund. Two Goldman bankers have been charged with criminal offences. While disclosing his salary had dropped to $17.5m for 2020, the bank stressed that Mr Solomon was unaware of the corruption. Mr Solomon's reward package comprises $2m in cash base pay, a $4.65m cash bonus, and $10.85m in stock-based compensation.

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