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it's our business

newspad of the Employee Share Ownership Centre

The State is back: Covid-19 is a game-changer

Urgent corporate governance reform will be sought throughout the western world to reflect the new pre-eminence of the state's role in economic management in the wake of the Covid-19 pandemic.

The Esop Centre joined the many voices calling for an urgent redefinition of relationships between employers and employees in the private sector, as the spectre grew of registered UK unemployment at least doubling to more than three million, once taxpayer subsidies currently safeguarding jobs are removed. In such conditions, rising wealth inequalities will be exposed as never before, which could affect social cohesion.

Concerns were crystallised in the US by Walt Disney empire heiress, Abigail Disney, who criticised the company for protecting executive bonuses and paying dividends of more than $1.5bn (£1.2bn) while cutting the pay of more than 100,000 employees to help weather the financial impact of Covid-19 (*see full story on page 16*).

Meanwhile, the financial services sector was on the brink of major structural change - more employees working full time from home, online and video-conferencing; factory-style shifts to limit the number of employees in the office at any one time; one in every two desks pulled out to aid social distancing; screening employees before letting them into the office, top of the range air filtration systems and so on.

The Financial Times called for further radical reforms as multi-billion pound welfare and aid packages were announced, believing that unequivocally "the state is back"; as *"the virus lays bare the frailty of the social contract" and "an irregular and precarious labour market," with welfare support of just £94.25 per week on statutory sick pay or £317 a month on Universal Credit.*

Esop Centre director, Alderman Professor Michael Mainelli, said: *"As a Financial Times leader article noted, the pandemic has exposed the limitations of unfettered markets…and marks the close of an era in which power migrated from states and governments to market.* Universal Credit has consequently been transformed overnight from the absolute minimum needed to keep 'benefits scroungers' alive to a lifeline for hundreds of thousands of newly unemployed workers and self-employed.

"*This same conclusion I believe will be drawn by employers in respect of their extreme market-driven and one-way-flexible reward policies. The responsible employer and their comprehensive, security and support-driven reward package is back."*

In a recent *Long Finance* paper, co-authored with Paul Taffinder, Professor Mainelli argued: "*The scale of monetary and fiscal interventions by*

From the chairman

NO PLAGUE WITHOUT A SMOKE - Sam Pepys came into his own at the time of the Great Plague of 1665. He buried his cheese in his garden to keep it safe. It even became known as Pepys's plague so well did he record it.

He would not even have been fazed by the French discovery that smokers are less likely to die, which has led Macron to confine sales of nicotine patches to pharmacies.

When Pepys saw red crosses marked on houses in Drury Lane on June 7 1665 he felt "forced to buy some roll-tobacco to smell to and chaw - which took away the apprehension". A boy at Eton recalls that he was never flogged so hard as he was in that year - for not smoking. Plague pits can be identified by fragments of the clay pipes on which the sextons puffed hopefully.

For scientific evidence of the role of the plague in deaths we had to wait some 350 years till this century. Then as now there were "pre-existing conditions" in nearly 90 percent of plague victims. Instant knowledge is more than we can expect.

Malcolm Hurlston CBE

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governments is breathtaking. It may be that this scale was essential. It may be that governments, having decided on various forms of lock-down had to take responsibility for the economic impact. It may be that financial services could only have a minor role in saving its own system, but it seems to have been mostly bypassed in favour of direct government control of the economy. Post-Covid-19, in a world with governments assuming more and more control of a shrinking GDP, the resulting world may be one similar to post-WWII where the UK government comprised more than 60 percent of the economy.

"So far, financial services may be functioning, trundling along while government takes the commanding heights of the economy as a sideswipe to addressing a pandemic, but the performance of financial services in this crisis is not a shining one."

The worst example so far, said Professor Mainelli was the UK banks failing to take the initiative over scrapping £8bn worth of their own planned dividends amid recession fears – the need to preserve capital in a crisis, rather than favouring shareholders. ''*That should have been an obvious pitfall, though there are sensible counter-arguments of 'business as usual' dividends. However, this issue is now being seen as a decision taken by government, and not by managers, and that is certainly not favourable for banking leaders."*

He warned: "*Financial services may find 'post-Covid-19' particularly painful. There may have been an opportunity, sadly certainly missed, for financial services to lay out how, working with government, the sector could help people and businesses through the crisis. Instead, whatever opportunities do exist have been left to government, and government has largely been bypassing financial services with perhaps the exception of a general reliance on payment services. Some financial services sectors are working harder through the Covid-19 crisis, such as share scheme and investment management firms working overtime to reassure investors of their positions. There are heart-warming tales of accountancy firms - smaller ones at least - offering immediate discounts and deferring fees. Not all financial services are tarred with the same brush, but still..."*

The left-leaning High Pay Centre insisted that government bail-outs and employee pay support of large businesses affected by Covid-19 must include social and environmental conditions including: fair pay, fair tax contributions and worker representation on company boards. Schroders agreed, saying that companies should 'put employees, customers and suppliers first' as they battle to survive the lockdown. The City asset manager wrote to distressed firms offering rescue capital quickly, but in return said it expected boards '*to suspend dividends and reconsider management remuneration'*.

Professor Mainelli called for the re-birth of job evaluation and pay structures, so that all staff, including executives, are paid on a common basis, fairly in relation to their skills and responsibilities and for men and women to be paid equally, rather than continuing to import market-biases and premiums.

There can be little doubt too that significant direct and indirect tax increases are on their way, especially for the wealthy of western Europe, once the pandemic is contained and nations get back to work. The business and jobs loan packages launched by western governments are so huge that the annual interest bills faced by state exchequers will run into billions, despite borrowing rates being at record lows.

Professor Mainelli's views were supported by former Tory leader William Hague, who wrote in '*The Telegraph': "The sharpest recession of our lives will push to the forefront of politics fundamental issues about the taxation of wealth, the case for basic income provided by governments and the responsibility of companies for their employees. It has been the natural tendency of the new technologies to widen inequality, increasing the returns to capital, rather than labour and leaving poorly educated people out of the (erstwhile) booming global economy.*

"With young people the most severely affected socially and economically – the year they are losing can never be restored and the jobs they were hoping for will be in shorter supply – the issue of how to handle the vast debts now being accumulated will shoot to the top of election agendas. Political parties will campaign for debt forgiveness and write-offs and for the cancelling by central banks of money borrowed by governments, with inflationary consequences."

Aspects of corporate governance which are coming under immediate focus are: executive reward levels and equity incentives in public companies, the size and frequency of dividend payments to shareholders and financial engineering strategies, such as corporate share/stock buy-backs and short-selling by hedge funds. One problem which remuneration consultants will have to meet head on is whether to advise that deeply underwater share options in executive incentive schemes be re-priced to take account of the steep falls on global share markets, or whether existing options be left to either recover in value or wither on the vine and be replaced with new sets of option incentives pitched at the new lower level of share prices.

When normality returns, the pressure on UK plc to reduce comparative pay ratios within their organisations will be huge. Will a £5m-a-year ceo expect his or her reward package to receive a universal nod of approval? The UK's notion of the term '*key workers'* has changed. Since such sums are usually fuelled by share-based incentive schemes, fund managers will come under pressure to urge remuneration committees not to re-draw performance targets in executives' favour.

President Trump's concessions on US executive compensation levels in order to get the CARES Act through Congress have put down a marker over what may no longer be acceptable or even admirable in the size of reward packages received by senior US executives. Distressed US businesses *seeking* state loans or loan guarantees via the $2 trillion CARES stimulus package must agree that, from the date on which the loan or guarantee agreement is executed until one year after the loan or loan guarantee is no longer outstanding, total compensation (including salary, stock and bonuses) and severance of certain employees will be limited. Specifically, *Applicable businesses may *not* award employees receiving calendar year 2019 compensation above $425,000 pa (£342,740 sterling); or more compensation than they received in 2019 or severance pay or other benefits upon termination exceeding twice their 2019 compensation amount – *a condition which freezes middle management pay in those US companies forced to apply for taxpayer loans to tide them over the crisis*. *The knock-out clause for top executives is that officers or employees receiving annual compensation of more than $3m (£2,420,000 sterling) may not receive total compensation in excess of $3m, *plus* 50 percent of the excess above $3m. So a senior executive who received $10m in total reward last year would have to 'lose' $3.5m of that amount this year, in order to permit his/her company to make a valid application for loan assistance under the CARES Act.

Politicians, shareholder activists and social lobbyist groups will seize on this new $3m reward benchmark number, as an arbiter of the maximum reward to be considered as '*fair*' from now on. In the UK, £2,420,000 pa is easily beaten by many FTSE ceos and so pressures on top UK executive remuneration levels will ratchet up further.

*Young people should be given shares in companies rescued by the government, said former 10 Downing Street deputy policy chief, Will Tanner. He proposed a scheme similar to that operated by Mrs Thatcher when BT was privatised in 1984, when ten percent of the equity was reserved for BT employees. Mr Tanner, who runs the think tank, *Onward*, urged the Treasury to reserve a portion of Covid-19 shareholdings for young people because they were suffering most from the lock-down and consequent mass unemployment. Since many young adults were disenchanted with share ownership and markets, awarding them share stakes in state-rescued companies could bring them back into the fold. The government has already suspended the commercial franchises of passenger rail companies for six months, effectively putting them into temporary nationalisation and the same medicine could be dished out to other distressed sectors.

It seems probable that UK taxpayers will end up owning substantial stakes in some of the start-ups currently being protected by Chancellor Rishi Sunak, who promised £1.25bn worth of support for those ineligible for current Covid-19 rescue schemes for SMEs.

The Centre will argue that **all** employees – including other workers not technically employees - in those businesses in which the state is forced to take an equity stake should be offered a portion of the state's equity stake, perhaps in the form of discounted shares.

The Treasury will match up to £250m of private investment and add £550m to an existing loan and grant scheme for smaller firms that focus on R & D. To qualify to receive taxpayers' money from the 'Future Fund,' a company must have raised £250,000 privately in the last five years. The matching investment in start-ups will be between £125,000 and £5m and must be matched by private investors. If the money is not repaid, the government will take an *ownership stake* in the company. The state-backed investment in start-ups will come in the form of convertible loans, which means that if they are not repaid, they will convert into equity in the company. The new scheme is designed to provide liquidity in difficult times and promote private investment, rather than have the UK government owning equity in a large number of struggling tech companies, said the Treasury.

*France is to bar companies whose HQs are registered in tax havens, or who have subsidiaries benefiting from low-tax regimes, from receiving any government aid during the Covid-19 crisis. France has pledged to stump up billions to help companies avoid folding during the nationwide lockdown, which is set to be gradually lifted beyond essential sectors, starting from Monday, May 11. However tax havens are hard to define since Luxembourg, Monaco, the Netherlands and Ireland are tax havens to which many EU countries prefer to be blind.

*Companies are reviewing employee reward plans, reported *EQ Boardroom* update. Some companies are deferring bonus cash payments or converting them into shares, given the current economic environment. If a company is evaluating cash retention measures and has cash bonuses to pay over the coming months, it needs to review a range of factors: HR and finance teams need to determine whether discretion is available under the rules of the scheme and whether there will be accounting consequences; is the remuneration committee likely to endorse proposed changes? Are there sufficient shares available within the company's EBT– or will new shares be needed under the headroom rules? Other issues include whether to use free shares, possibly using a short deferral period of a week or month to collect instructions, or nil-cost options, with employees choosing when to receive shares and the taxation point; if shares are used, will employees be able to execute trades promptly? Consider any knock-on effects to share trading facilities. When making their instructions, review the vesting choices given to employees about what to do with the remainder of their shares after tax and NICs costs are covered. Any adjustments that the company decides to implement need to be explained carefully to all share plan participants.

The Chartered Institute of Personnel and Development found in its latest reward survey that individual performance is the most common form of variable pay, used by 62 percent of those with bonuses. Yet Cinderella *collective* bonus plans have a much stronger record in research, it said. Greater use of collective pay schemes, such as profit and gain-sharing, coincides with better site and organisation performance (Eurofound, 2015). For example, *Benson and Sajjadiani* (2017) report that manufacturing plants that use gain-sharing plans experience greater productivity, higher quality and other performance improvements.

UK employers need to divert their attention from executive and individual incentives and let all employees and valued co-workers share financially in the benefits of their success, said Centre chairman Malcolm Hurlston CBE.

*The Investment Association (IA) wrote to the chairs of all FTSE350 companies on behalf of its asset management members, saying: "*Members recognise that it is for the board to decide on the payment of a dividend. In addition, they agree that companies should consider whether it is suitable and sustainable for a dividend to be paid in light of the current crisis and whether employees and suppliers can be paid. At the same time, the IA stresses that dividends are an important income stream for pensioners, charities, savers and funds and therefore companies should not unnecessarily reduce their dividend level and they should restart payments as soon as prudent to do so. Ultimately companies are warned to be transparent about their approach to dividends, particularly if seeking additional capital*." On executive reward, the IA letter said "*If companies are cancelling dividend payments or making changes to their workforce pay, members will support boards and remuneration committees who demonstrate how this should be reflected in their approach to executive pay."*

The head of Federated Hermes's investment stewardship, wrote an open letter to ceos too, saying it would "urge companies to strengthen their balance sheets and act in their long-term interest when making capital allocation decisions". Hans-Christoph Hirt added: "*management remuneration should be appropriately aligned with the experience of the wider workforce and society*." Federated Hermes manages $575bn in assets, including large holdings in major companies in both the US and the UK. Mr Hirt warned: "*The world will not be the same again – or at least, it should not be. We look forward to working with you on a more sustainable form of capitalism during this unprecedented time and post-crisis."*

Media attacks on short-selling company shares and corporate share buy-backs are growing, even though companies sometimes buy back some of their shares to honour employee share plan and share option incentive pay-outs (*as an alternative to issuing new paper).*

Semler Brossy, the US executive compensation company, reported that 97 companies in the Russell 3000 stock index had made reductions to ceo *salaries* before the end of March and the average reduction was 67 percent. The ceos of big US retail names, such as Burlington, Capri (Michael Kors), Macy's and Neiman Marcus, have refused to take any more salary for the time being.

Last year, the ceos of 181 large US corporations, members of the Business Roundtable, signed a document pledging their commitment to run their companies for the benefit of employees and communities and not just for shareholders. However, until a few weeks ago, some of these signatories were still busy operating share buy-backs, paying out shareholder dividends and, in a few cases, seeking reward rises for their top brass, said *The New York Times.*

The Financial Services Forum, comprising most of America's biggest banks, announced that its members would not make any more stock buy-backs during the second quarter of this year due to the pandemic.

*The chancellor's 80 percent emergency loan guarantee scheme for larger SMEs got off to a slow start, with only £1.1bn taken up 6,000 businesses by mid-April. Certain banks were being blamed for tardiness over approving loan applications, for fear of being left with the uncovered 20 percent of the outstanding loan, should the business later fail.

*More than 3.2m employees had been placed on official furlough after the first three days of the

Treasury's paid leave programme, as employers raced to get them registered for rebate before the end of the pay month. HMRC had received 435,000 applications from employers seeking financial help with their wage bills. Under the Jobs Retention Scheme (JRS), 80 percent of the employees' wages, up to a monthly limit of £2,500, will be covered by taxpayers, who most likely will foot a bill of up to £50bn, as the scheme is being extended until the end of June. Employers pay their employees and then reclaim the 80 percent of normal wages from HMRC at the end of the month. **Bird & Bird** advised companies using JRS to obtain the written consent of the furloughed employees, rather than relying on their implied consent.

During the pandemic, HMRC's usual 3.5 percent annual interest on deferred tax payments will be waived.

Richard Harris, chief legal officer at recruitment consultancy Robert Walters, said**:** "*The chancellor has offered a package of support for vast swathes of the self-employed and freelance community. This is Keynesian – a new New Deal- but with the self-employed rather than big industry and it underlines the huge importance of the gig economy to UK plc – and, as the chancellor put it, 'righting the ship'. This is a lifeline for many. However, Rishi Sunak is focusing on helping those least likely to weather the storm. The self-employed making profits of over £50,000 are not part of the scheme. This will adversely affect those in white-collar professional jobs. Perversely, those putting large amounts of expenses against their income - who are on the cusp of this threshold - may be inadvertently better off. I believe the chancellor has gone for simplicity and quick-delivery rather than trying to save everyone and he is unapologetic about this stance.*"

The current three state-sponsored bank funding schemes for distressed businesses are:

*The Covid Corporate Financing Facility, a scheme run by the Bank of England (BoE) and HM Treasury, enabling larger investment grade rated (or equivalent) businesses to obtain cheap short term lending money from the BoE, which revealed that it had already bought £10.7bn worth of commercial paper issued by 35 companies and had given approval to another 40 companies to draw a further £28.4bn

*The new Coronavirus Large Business Interruption Loan Scheme, a scheme run by the British Business Bank, aimed at supporting mid-cap and larger businesses with a turnover of more than £45m; and

*The Coronavirus Business Interruption Loan Scheme, a scheme run by the British Business Bank, aimed at supporting smaller businesses with a maximum turnover of £45m. Under this latter scheme, 16,600 businesses had secured loans (out of 28,000 applicants) to a total value of £2.8bn to date, announced Business secretary Alok Sharma.

*Companies rescued by EU state share-buying programmes during the pandemic will be barred from paying executives bonuses, according to a leaked document from the Commission seen by the *Guardian*. The restrictions, which would extend to a ban on dividend payments and share buybacks, could be imposed on companies where the government has taken an equity stake in order to keep them afloat through the global pandemic. If backed by the EU's 27 member states, the rules would apply to the UK too, at least until December 31.

*Many Centre members, particularly major legal groups and share plan administrators, established dedicated Covid teams of professionals to advise clients on a host of issues, including employment conditions, contracts disrupted by the pandemic, getting financial support from the government, what the economy might look like in two years' time, what to do when employees go down with the virus and so on.

*Pension consultancy firm, LCP, estimated that more than 500 companies would take advantage of an emergency measure under which the trustees of company pension schemes can allow them to postpone paying *top up* contributions for three months. The hope is that they will preserve cash and catch up with the contributions later.

*Meanwhile**,** more than seven million UK citizens are mired in dangerous levels of debt and at risk of exploitation by unscrupulous lenders, the Financial Conduct Authority warned. They are struggling to pay bills and day-to-day expenses, said the FCA, with 7.4m saying they have borrowed too much and find paying the money back a burden. The figures will raise fresh fears about the implications of a five -year debt binge fuelled by ultra-low interest rates, which has pushed the amount owed on credit cards in the UK up to **£72.2bn**, revealed Bank of England data. It suggests that many families will be unable to cope, now that an economic downturn, brought on by the pandemic, is hitting the jobs market.

*The Global Compact Network UK said in a report that businesses faced increasing demands from their stakeholders, especially consumers, investors, and regulators, to be more transparent about their business practices and their exposure to risks related to their environmental, social, and governance (ESG) performance. Oxfam's *Behind the Brands* campaign and the World Benchmarking Alliance are creating new incentives for leading companies to be transparent about their ESG performance. Major concerns are the costs of data collection, requirements for assurance, exposure to legal jeopardy, and perceptions of reputational risk. The lines between mandatory and voluntary, compliance and non-compliance, financial and non -financial are all blurring. Changes in the corporate reporting landscape and, more generally, in the context of sustainability information disclosure, are creating new conflicts within companies as different departments try to reconcile their sometimes very different views of the costs and benefits of transparency. *'Debating Disclosure: the pros and cons of corporate transparency*' explores the tension within companies over their reporting and disclosure on ESG issues to build a better understanding of the risk/return profile of transparency and so help companies to balance competing interests.

How Centre members are coping with Covid-19

Bird & Bird's incentives team, like most others, has been working at home since the lock-down on March 23. Partner Colin Kendon told newspad: "We are set up well for home working and the transition has gone relatively smoothly. We are seeing more enquiries from private companies relating to sacrificing salary in exchange for equity. The main issue (as always) is whether the equity is like value. Companies usually have to apply a future looking valuation to prevent the proposals being too dilutive."

Deloitte's share plans team are all at home. Partner Bill Cohen told newspad: "We have supported flexible working for many years, and therefore we have been able to move to home working pretty seamlessly and the technology has held up brilliantly.

There has been a natural uplift of Covid related work e.g. impact of furloughing on share plan participation, SAYE resets, LTIP target setting, post Covid windfall mitigation etc. However, business as usual remains at the core: plan renewals, performance target setting, and compliance.

Newspad asked whether clients were asking for a different focus on executive equity remuneration schemes and Bill replied: "Yes. They are asking about quantum, performance target setting, strike price setting, windfall mitigation strategies, regulatory compliance for financial services and fairness (vis-a-vis shareholders, employees and broader stakeholders). This is a particular hot topic for companies in receipt of government support."

Are companies still installing all-employee share plans and discretionary share schemes to the same extent as before? – "We have seen some companies defer grants until there is a bit less volatility in the capital markets. But share plans are remaining a key component of remuneration packages despite the crisis knocking confidence."

*While most of **Equiniti**'s ops teams are working from home, it has colleagues continuing to trek into its offices to ensure that essential services continue to be delivered to customers, pensioners and shareholders who must receive the documents they need. "Whether it's payroll services, share dealing for investors or share plan maturities, there are some things that must be completed in the office. This is the engine room of Equiniti's business and it's still running on full steam," said coo Thera Prins. The plan administrator advised plan issuers to check their share registers to find out who has been buying, selling or shorting their shares during the pandemic, in order to better manage their investor relations.

*William Franklin partner at **Pett Franklin** commented: "As with Chou En Lai's oft misquoted and misunderstood remarks about the long term impact of the French Revolution it is too early to tell what the long term impact on business of social distancing will be, but some things are already emerging. At Pett Franklin we moved swiftly to remote home based working using Microsoft Teams but are only now gradually starting to make full use of the enormous power of this system to promote team working. It is so much more than just a video conferencing system. The long term impacts of pay cuts, mass unemployment, low or very volatile valuations, and the moral hazards associated with executive pay after most of the private sector has been bailed out by the taxpayers of countries worldwide will take time to sink in.

"There is going to be a huge opportunity to accelerate all-employee ownership through swapping some of the emergency government debt funding of business for new forms of equity based interests as we come out of the crisis. Whether that great opportunity will be seized will require a new consensus and many of those, who should have known better, who have in easier times indulged in the politics of polarisation and division being shocked out of their self indulgence into fresh thinking"

BT honours promise of free shares to staff

Centre member **BT** is to honour its promise to give each of its 100,000 staff £500 in shares in June under its new "*your share*" scheme, which costs £50m annually. In addition, BT has given staff guarantees that they will not lose their jobs or be furloughed - and it has awarded 58,000 frontline workers, such as engineers, a 1.5 percent pay rise - while managers have had their salaries frozen. Ceo Philip Jansen, the first publicly confirmed FTSE 100 boss to be diagnosed with Covid-19, said that he would donate his salary to the NHS Charities Together Covid-19 appeal and to affected small businesses in his local community for at least the next six months. Jansen's annual base salary, before performance bonuses, is £1.1m. BT said: "*No employee will lose their job in the foreseeable future – at least the next three months – as a direct result of changing trading conditions brought about by coronavirus.*" The company said that the 1.5 percent pay rise from July 1 applies to 58,000 team workers, among its 85,000 UK staff, the vast majority of whom are frontline designated key workers. BT said that 26,000 managers will have their pay frozen during this financial year. However, the 1.5 percent pay rise does not extend to another 16,000 employees in BT's global business.

EVENTS

Next Centre webinar

On May 15 at 14:30 , David Craddock will follow up his, well received, introduction to EMIs with "**EMIs: powerful lessons from five practical case studies**". Details on how to register will be published on https://fsclub.zyen.com/events/webinars.

Jersey seminar re-schedule

The Centre's Jersey share schemes and trustees seminar, held in partnership with the Society of Trust & Estate Practitioners (STEP -Jersey branch), due to take place at the Pomme d'Or Hotel in St Helier has been re-scheduled to the autumn (date to be confirmed). Given the Covid-19 pandemic, the hiatus in post Brexit negotiations, corporate governance, the global reach of trustees and the growth of employee ownership trusts, it is vital for those interested in employee share ownership schemes and trusteeship to attend this annual seminar. The programme includes updates on the loan charge, case law, and Esops. Given the revised timing we shall invite Mark Hoban, the new chairman of the Jersey Financial Services Commission to be guest of honour and check whether popular speaker and revenue-watcher Paul Malin may now be available. The seminar will conclude with a buffet lunch for all. Experts include: Katherine Neal, Ogier; Graham Muir, CMS; David Pett, Temple Tax Chambers and David Craddock of his eponymously named Consultancy Services. The seminar will be chaired by **Malcolm Hurlston CBE**, who first visited the Pomme d'Or during his national service in 1957. "*Those were uncertain times and I wondered whether I would be able to travel so far again*" he reveals. "*Not unlike now*". Prices: Esop Centre/ STEP members: £375, Non-members: £480. Email events@esopcentre.com or call the Centre on +44 (0)20 7562 0586.

Centre share plan symposium

The Centre's fourth **British Isles share plans symposium**, co-sponsored by **Ocorian,** the award-winning provider of bespoke administration and fiduciary services to corporate, institutional and private investors, is rescheduled to take place in London on **Thursday October 15** this year. Enquiries please to Fred Hackworth: fred_hackworth@zyen.com.

MOVERS AND SHAKERS

Centre member **Ocorian** completed the acquisition of Allegro, a Luxembourg based third party management company and fund administrator. Allegro is fully licensed to provide management and fund administration services to AIF, RAIF, non -AIF and UCITS funds. Founded twelve years ago, Allegro's multiple regulatory licences means it provides comprehensive services in alternative assets. Together Ocorian and Allegro can offer a one-stop shop for fund groups so they can maximise the benefit of centralising their administration, said Ocorian group ceo Farah Ballands. Allegro's clients are large institutional investors, international fund promoters and investment managers. Allegro is the first acquisition Ocorian has made since its merger with Estera earlier this year.

UK CORNER

Share plan tax benefits threatened by furloughs

If a company has Enterprise Management Incentive (EMI) option holders who aren't working for the company during a period on furlough, RM2 Partnership believes that technically it is a "disqualifying event" under EMI legislation and the relevant tax advantages for the individual participant could be lost. This is because the employee would have no *committed time* as defined in the EMI legislation as the employee would not be required to spend any time on the business of the company. It is believed that this issue has been raised with HMRC and the hope is that the government will publish a concession similar to the one that already exists for EMI option holders who are called up to serve as armed forces reservists. "*We hope that such a concession can be provided soon to aid struggling companies dealing with furloughing within their organisation"* said RM2.

The adverse tax consequences that some of the UK government's business support measures (including the Coronavirus Job Retention Scheme) could have on employee share schemes, were examined by lawyers *Squire Patton Boggs*. They said that leaver provisions in all-employee share schemes were another area of concern over preserving tax benefits and that concern extended to those employees who were made redundant. A failure to consider carefully and then navigate, the complexities of both scheme rules and tax law, before making or communicating decisions, could lead to a loss of valuable tax advantages. An employer has to decide when designing an employee share scheme how it will deal with those employees who leave the business or who are made redundant. There are several ways that scheme rules cover this, ranging from an automatic lapse of options, to wide discretion being granted to boards and remuneration committees to decide on a case-by-case basis. Under the first alternative, there is a risk that the current pandemic crisis could result in share options and awards lapsing inadvertently (e.g. where ceasing to perform employment duties while on furlough creates a lapse event). In the second case, boards should have some scope to use discretion to prevent options from lapsing. However, boards should consider the circumstances carefully and operate their discretion in line with the rules of the relevant scheme. In some scenarios, scheme rules will specifically have catered for redundancy creating a *good leaver* event but will not have envisaged furloughing. However, the rules for tax advantaged plans often apply in a way that will treat redundancy differently from other leaver events, added *Squire Patton Boggs*.

Meanwhile, the EMI working time requirement applies both at the time of an option grant and throughout its life and failure to meet the condition can mean that an option ceases to qualify for EMI tax benefits. The rules state that an employee must be required to spend at least 25 hours a week or, if less, 75 percent of their working time on the business of the relevant group. Concessions are built in where an employee would have been able to commit that time to the business but for injury, ill health, disability, pregnancy or parental leave, a reasonable holiday entitlement or as a result of garden leave during a notice period. It remains to be seen whether these concessions will be extended to cover employees who have been furloughed or who are required to work reduced hours and no longer meet the statutory test. For those on reduced hours, the 75 percent of working time rule may provide a safety net.

Sales to EOTs now more advantageous

The reduction of the Entrepreneurs Relief lifetime allowance from £10m to £1m, announced by the chancellor in his Budget speech, will make selling to an EOT even more attractive, according to transatlantic expert and author **Garry Karch** of **Doyle Clayton.** Whereas the change in lifetime allowance can double the cgt burden on sales to third parties, a sale to an EOT could produce additional sales proceeds of £900,000 on a sale at a market value of £5m. "There are certain reasons why a third party sale can continue to make sense" said Garry "but business owners looking to transition are now doing themselves a major disservice if they do not explore the EOT alternative."

Virtual agms

Two out of three FTSE 100 companies were holding agms behind closed doors this year, with no opportunity for shareholders to hold directors to account by asking them unfiltered questions in real time, claimed Share Action, the shareholder lobby group. It criticised companies such as BAE Systems, HSBC and Next, who were giving shareholders no chance to ask questions by live webcasts. While all companies have been hit by Covid-19 restrictions, which make the physical presence of more than a handful of shareholders impossible, some are allowing shareholders to ask questions live by webcast and, crucially, ahead of the voting on resolutions. These so-called *hybrid* meetings are being conducted by, among others, Reckitt Benckiser, Taylor Wimpey and Unilever.

Virtual agms are needed during social isolation periods so that shareholders can question directors and vote on resolutions for changes in boardroom personnel and/or executive remuneration. This conclusion emerged after four *magic circle* legal groups -Linklaters, Slaughter and May, Clifford Chance and Freshfields Bruckhaus Deringer jointly issued a guidance note to public companies in the run-up to their agms this month and last month. They stepped into the vacuum after company agms were being postponed and corporate reports ignored. Supporting the guidance were the Financial Reporting Council, the City of London Law Society Company Law Committee, GC100 – the Association of General Counsel and Company Secretaries working in FTSE 100 Companies, the Investment Association and the Quoted Companies Alliance. The guidelines are: *Shareholders should not attend in person *Two people (directors) only should attend; *Shareholders should be encouraged to vote by proxy. *Companies may want to encourage the submission of questions for the board of directors in writing with the answers to be published in whatever manner companies determine, e.g. on the company website. *Some companies may have to have extra personnel at the agm to ensure its proper conduct and safe operation (such as technicians, if there is to be a web-cast, and/or security staff) but this should be kept to the minimum. The UK Shareholders Association wants companies to ensure voting rights are passed through to all small shareholders, including employee shareholders. Malcolm Hurlston is a director of UKSA with which the Centre shares reciprocal membership.

**Companies House accounts filing* – Companies can apply for a three-month extension to file their accounts, in order to avoid an automatic late-filing penalty.

**Stamp duty payments to HMRC* – HMRC will not be stamping stock transfer forms as it has temporarily changed the way it deals with stamp duty paid on the purchase of shares using a stock transfer form. Payments should be made electronically, with details of the transaction emailed to HMRC, which will accept e-signatures on stock transfer forms. If the stamping application is approved, HMRC will send a confirmation letter by email.

Regulators gang up on dividend pay outs

After the intervention of their regulator, Barclays, RBS, HSBC, Standard Chartered and Lloyds said in co-ordinated announcements that they would scrap their dividend pay-outs this year. In addition the Prudential Regulation Authority said it expected the major UK banks not to pay bonuses to senior staff this year. This came after pressure to put a stop to £15.6bn of dividends due to be paid out by UK banks in April and May. Agustín Carstens, head of the Bank for International Settlements (BIS) — known as the central bank for central banks — called for a global freeze on dividends in the sector. In an appeal for action by supervisors to ensure that lenders are equipped to push out the huge amount of extra credit needed to keep companies afloat, Mr Carstens said: “Banks should be part of the solution, not part of the problem.”

None of the main banks initially discussed their ceo total annual reward packages, which last year collectively totalled more than £20m, but pressure rapidly mounted on them to react in the pandemic crisis. The Co-operative Bank and TSB both announced that they had axed executive bonus payments this year.

Lenders eventually buckled under pressure to cut remuneration after the Bank of England warned them against handing senior staff cash bonuses in the next few months and blocked dividends. HSBC said that chairman Mark Tucker would donate his entire fee for 2020 to charities supporting healthcare workers and vulnerable people in Britain and Hong Kong. Alison Rose, ceo of state-supported RBS, decided to donate much of her salary to charity and to give up projected bonuses as the industry sought to ward off criticism over excessive pay amid the Covid-19 pandemic. Bill Winters, Standard Chartered ceo, will give away pay too.

The Prudential Regulation Authority (PRA) wrote to the seven largest UK retail banks asking them to confirm that they would suspend the payment of dividends - and share buy backs – until the end of this calendar year. *In practice, this was an order from the regulator and eventually the banks confirmed they would comply,* said Stephen Diosi of *Mishcon de Reya*. However others believe that the PRA is going beyond its remit and it may face a legal challenge.

The aim is to ensure that the banks keep as much cash as they can to lend to a UK economy that is facing perilous times. In addition the letter said many banks had already paid the 2019 bonuses, but for those where the numbers had been declared, but not yet paid to the employees, the cash element will be suspended. The PRA's letter did not address whether the usual Remuneration Code rules on deferred compensation (malus) would apply to the suspended cash element. Normally, deferred compensation is at risk of malus if information subsequently comes to the bank's attention. Ordinarily, the cash element of a bonus is only at risk of reduction if it can be shown there was misconduct by an individual employee, or a major failure in risk management for which they bear some responsibility (known as claw-back). Remuneration advisers may be negotiating the consequences of this decision for years to come.

The European Banking Authority sent a similar instruction, which means it is highly likely that a ban on paying cash bonuses will be followed by all major banks. Nathan Bostock, ceo of Santander UK, announced that he would donate £1m of his total £4.3m annual reward to a virus fund launched by his bank's parent company. Spanish lenders were early to move, with Banco Bilbao Vizcaya announcing that 300 of its top executives had waived their 2020 bonuses. Italy's UniCredit followed suit a few days later. "*Banks, shareholders, managers and key risk takers should take part in the rethink of where we are right now and try to preserve as much capital as possible,*" said Andrea Enria, the European Central Bank's top banking watchdog.

The sums involved may be relatively immaterial compared to the amounts payable by way of dividends, but the regulators clearly recall the public backlash against bankers receiving large bonuses despite the financial crash of 2008/2009. The Institute of Directors joined the chorus by asking UK banks not to make large executive incentive awards this year.

Shareholder voting agency PIRC, which wants variable pay to be suspended, said that if companies were axing or reducing dividend pay-outs and slashing jobs, then awarding executives substantial bonuses would be unacceptable.

One in every four of the biggest companies listed in London slashed the amount of money paid to ceos in the face of the Covid-19 pandemic. Most directors at these 25 firms cut their salaries and fees by 20 percent, the same proportion of pay which furloughed workers are forfeiting. However, some went further, according to a survey and analysis of FTSE 100 companies' announcements by the High Pay Centre. Andy Ransom, ceo of Rentokil, reduced his own salary by 35 per cent and donated the rest of it to an employee fund. Burberry announced a 20 percent cut to directors' pay for three months and said it would not rely on the government's Covid-19 job retention scheme for employees unable to work during the crisis. The top salary savings will be donated to a charitable fund, the Burberry Foundation Covid-19 Community Fund, to help support communities struggling with the fallout from the coronavirus pandemic by supplying personal protective equipment (PPE) and food banks.

Three FTSE 100 companies sent staff home without cutting dividends. Primark owner, Associated British Foods has said it would furlough 30,000 staff, but has not cut its dividend. Companies whose ceos take pay cuts during the Covid-19 crisis should be wary of handing them lucrative share awards at the same time, investment advisers warned.

Although a flurry of executives accepted wage reductions, made charity donations or waived bonuses, some firms, including those receiving state support to pay "furloughed" staff, went ahead with LTIPs, which will authorise sizeable share awards to directors if they hit targets, reported *The Guardian*.

Insurer Prudential announced executive pay cuts in the light of the current situation and the need for continued restraint in executive remuneration. For ceo Michael Wells, that meant a salary reduction of

£23,000, to £1.15m. Hours later, in a separate disclosure, the insurer handed Wells an LTIP worth £878,873 at current share prices. He will not get anything for three years and will have to meet stretching performance criteria to receive the maximum amount of 83,782 shares. However, the shares could be worth significantly more by the time the scheme pays out in April 2023, if markets rebound once the Covid-19 pandemic eases. The salaries of Prudential executive directors were reduced to December 31 2019, levels, effective April 1 and their pension cash contribution benefits were cut from 25 percent to 13 percent of salary, starting May 14. Meanwhile, the group 2020 Prudential LTIP award maximum pay-out will no longer be raised from 250 percent to 300 percent of salary.

ITV directors, including ceo Carolyn McCall, volunteered to take a 20 percent pay cut and forfeit their 2020 bonuses. Three days later, ITV announced LTIPs and other share-based bonus payments, including some related to 2019, a year for which investors will receive no dividend. The payments, which come despite ITV putting some staff on the state-backed furlough scheme, would be worth £3.2m to McCall alone, even at current low share prices. A spokesperson pointed out that ITV "retains full discretion to adjust final outcomes under the awards to ensure that they are warranted, taking into account all relevant factors".

Channel 4 had already paid out millions in bonuses to directors and staff while opening talks with ministers about potentially tapping an emergency £75m credit facility. All C4 board members have taken a 20 percent pay cut and bonuses have been axed. Pay rises at Guardian Media Group have been suspended for at least six months, while managers face a 20 percent pay cut and board and Scott Trust members a 30 percent cut for six months. The group expects its revenues in the first half of the new financial year to be £20m lower than in the corresponding period last year. At Reach, owner of the Daily Mirror and Daily Express newspapers, almost 1,000 staff are going on furlough, meaning they will be paid 80 percent of their salary. Senior staff including boss Jim Mullen will forfeit 20 percent of their base pay. On March 30 however, Mullen was handed a 750,000-share LTIP worth more than £650,000 at present. Like ITV, Reach said it could adjust payouts retrospectively if they balloon.

Heathrow Airport paid out more than £100m in dividend pre-arranged before the Covid-19 crisis. The pay-out appeared to knee-cap the lobbying efforts of the Airports Owners Association, which is begging ministers for emergency taxpayers' cash to keep them going. Almost 25 percent of Heathrow's senior management has been made redundant.

G4S granted LTIPs worth a notional £9m to ten senior staff. The security firm has stressed that it could retrospectively adjust LTIP payouts and said directors were taking no 2020 bonus.

Meanwhile, the board and senior management at JD Sports have taken a salary cut of at least 25 percent, while chairman Peter Cowgill agreed to a 75 percent cut in his annual salary of £863m. The sportswear chain, whose stores remain shut, cancelled its dividend and deferred bonus and other incentive payments for senior staff.

Investment institutions managing pension fund money will be watching closely to make sure firms rein in LTIPs, whose value could be artificially inflated by eventual stock market recovery. "*In the overall context of the company, the experience of the workforce, the experience of shareholders, companies should think about making a gesture,*" said Hans-Christoph Hirt of Federated Hermes, which advises investors holding £700bn worth of assets. "*If there's a relatively quick recovery there may be windfall profits that are not really related to company performance but to the fact that there was a crisis and the government supported the overall economy*." He warned against the temptation to redraw LTIP criteria in favour of bosses who might otherwise face diminished rewards: "*It is critical not to allow readjustment of performance targets at this point*," he said. "*If you start to fiddle around with them and say things have changed and targets need to be lowered, pay wouldn't go down for 2020*."

Legal & General Investment Management warned that companies needed to be questioned if they took taxpayers' money during the crisis without ensuring that their own directors shouldered some of the financial pain.

Amid renewed scrutiny on pay however, executive sacrifices are proving varied: Lloyds executives will lose only their bonuses, but there is frugality at Persimmon, the house-builder castigated for the £110m bonus originally handed to former boss Jeff Fairburn (before public outrage forced a 30 percent reduction). Its board is taking a 20 percent basic pay cut and foregoing bonuses while workers are furloughed.

Company ceo reward sacrifices include**:** Monzo - Tom Blomfield, 100 percent salary cut for 12 months; Sky -Jeremy Darroch, six months' salary donated; BT- Philip Jansen, six months' salary donated; RBS -Alison Rose, 25 percent salary cut, no bonus Ryanair-Michael O'Leary, 50 percent salary cut in April/May; ITV-Carolyn McCall, 20 percent cut, no 2020 bonus; Virgin Atlantic - Shai Weiss, 20 percent cut from April to July; easyJet-Johan Lundgren, 20 percent cut for initial three months; Lloyds -Antonio Horta-Osorio, no bonus for 2020 and BAE Systems**-** Charles Woodburn, pledged to review

UK dividend pay-outs this year could fall by half, wiping out more than £50bn in shareholder returns, due to the Covid-19 crisis, lamented *The Telegraph*. Already, almost £30bn worth of dividends have been either axed or delayed, according to a report by the financial data firm **Link,** which fears that a further £25bn worth of scheduled dividends are at risk of being scrapped. Banks and miners have slashed their dividends, while there were doubts in the City that the oil companies could maintain their expected dividend pay-outs. However, companies in the food, healthcare, pharmaceutical and utility sectors are thought most unlikely to want to cut their dividends. The European Central Bank ordered Euro-zone lenders to cancel all dividends until at least October and warned them to be very moderate when paying out staff bonuses. However, most Wall Street banks want to pay out dividends.

Tesco went against the tide, handing investors a total £900m in dividend, despite taking £585m from the government's business rates relief holiday. Ceo Dave Lewis, said that the business rates relief allowed the supermarket to invest in "making the right decisions to feed the nation" during the pandemic and he argued that the relief covered only half of the additional costs the supermarket chain would face. Tesco has hired 45,000 extra employees and is not using the state-supported paid employee furlough programme.

Global drinks maker Diageo suspended its £4.5bn share buyback programme due to Covid-19.

*Some insurers halted dividend payments citing pressure from regulators and a row about the appropriateness of shareholder returns during the Covid-19 crisis. Aviva, Direct Line, RSA and Hiscox all said that they had suspended or dropped dividend payments in the light of the challenges created by the pandemic for businesses, households and customers. The Bank of England's PRA welcomed the news. The European insurance regulator and the PRA had urged restraint on dividend payments and staff bonuses. Aviva said later that its executive directors and leadership team would not be considered for any bonus awards, or basic pay rises, for 2020 until dividends are restarted. But Lord Lee, famously the first ISA millionaire, warned in his FT column: "A dividend passed leaves a scar on a company's record that can never be erased and investors have long memories". He said goodbye to Aviva and topped up with L&G, reserving the wooden spoon for Vimto-maker Nichols. "Many thousands of investors rely on dividend income to sustain them in retirement, or perhaps to pay care home fees."

Covid-19 company news

*Global brewer **AB InBev** cut its dividend in half to save £800m. The owner of Budweiser and Stella Artois will pay shareholders a final 2019 dividend of 50 cents per share.

***Auto Trader Group** slashed executive pay, put its staff on furlough and announced a share placing to strengthen its finances during the on-going coronavirus pandemic. The FTSE 100 listed online car marketplace said its entire board would forego at least half their salaries and that bonuses for top executives would be waived. Staff were being sent home under the government job retention scheme, under which they will still receive 80 percent of their salary, but Auto Trader said it intended to fully top up salaries for the large majority of those who are impacted. It announced plans to issue £200m of new shares in a bid to strengthen its balance sheet. The company said up to 46.5m new shares have been placed, worth five percent of its equity, at 400p per share.

***Daily Mail** and General Trust (DMGT) offered shares to 2,400 employees, as a means of avoiding job cuts and/or furloughing, said *Employee Benefits* magazine. Senior management offered this alternative approach to employees working within its group, which includes the Daily Mail, Metro and Mail Online. Employees earning £40,000 or below will be able to take a pay cut of between one and 26 percent in exchange for shares within the parent business. At the end of the financial year, employees who opt for shares could make a profit. If the share price is lower than when the shares were awarded, employees who wish to sell will be compensated.

***Deutsche Bank** may scrap bonuses for top management this year as regulators urge banks to preserve capital and keep lending through the Covid-19 pandemic. The company is looking at a range of possible measures and. a final decision could be announced shortly. Deutsche Bank scrapped bonuses for the management board under John Cryan, its ceo from 2015 until early 2018. His successor Christian Sewing re-instituted them for 2018 and paid another one earlier this year despite recording an annual loss of €5.7bn. A union representing bank workers has warned that broad-based bonus cuts could hit low-paid staff: “We oppose a general bonus cut because the bonus pool doesn’t only include staff with very high salaries,” Stephan Szukalski, a representative for the DBV union who sits on Deutsche Bank’s supervisory board, said. “Many medium- to low-income earners—of which there are many in Deutsche Bank—have made a contribution over the past years through the previous cuts.”

*__EasyJet__ founder Sir Stelios Haji Ioannou accused critics of making “malicious and naïve calls” for him and his family to waive £60m worth of dividends in the wake of the Covid-19 pandemic. He said that the dividend was already at the point of no return because the shares had gone ex-dividend on February 27 and that his family had no intention of writing cheques just to allow easyJet to pay the money straight to Airbus, from whom the budget airline had ordered £4.5bn worth of new planes. Worse still, directors at travel giant **TUI** refused to take a pay cut despite furloughing 11,000 UK staff and receiving a £1.6bn bailout from the German government. In what the *Daily Mail* described as “*an astonishing statement*,” TUI claimed its executive board was ‘also making its financial contribution in the crisis’, even though they are not giving up any pay or perks. The Anglo -German company said because financial targets are unlikely to be met due to the virus pandemic, it was unlikely there would be any bonuses for executives this year! TUI’s top team – led by ceo Fritz Joussen – failed to hit bonus targets in 2019 after the grounding of Boeing 737 Max jets, but still received large payouts, including cash contributions for their pensions. With their salary, pension and other perks, they could make more money than last year when Joussen pocketed £1.57m.

**Goldman Sachs announced a 46 percent drop in profits in the first quarter of the calendar year and redirected $937m of capital to cover potential losses on commercial loans. JP Morgan’s profits fell even more sharply, by 69 percent during the first quarter, as it set aside almost $7bn to cover potential loan losses.* Ceo Jamie Dimon warned that his bank could be forced to suspend its dividend payment for the first time ever if the US economy shrinks by more than a third during the second quarter of this year.

*Recruitment specialist **Hays** launched a £200m cash call and cancelled its dividend.

*__Legal & General__ paid out a £753m dividend, despite the warning from the Bank of England.

*Successful high street retailer **Next** is considering how to conserve cash not only by suspending buy-backs, delaying capital expenditure, and deferring or suspending the dividend. It is looking too at potentially redeeming a loan to its employee share ownership trust.

***P & O Ferries** stood on the brink of collapse as DP World, the group’s Dubai based owners, mulled over a £250m rescue package involving wage cuts for the 4,000 staff and a suspension of payments into the employees’ pension scheme. However, UK taxpayers were being asked to fork out £150m, allegedly to make such a deal work. *Aero-engine maker, **Rolls-Royce,** scrapped its final dividend, withdrew its guidance on profits and deliveries and bolstered its finances to cope with disruption to its business from the coronavirus pandemic. The company said that it had secured an additional £1.5bn revolving credit facility, bringing its overall liquidity to £6.7bn.

*Outsourcer **Serco Group** said its first dividend since 2014 had been withdrawn and that it would take advantage of UK government measures to cushion the financial blow from the Covid-19 outbreak. Serco said it would be using the UK government’s VAT deferral programme, postponing about £35m of VAT payments to early 2021. It will use the job retention scheme which offers salary support for employees who are furloughed. “*When the UK and other governments are helping Serco with its liquidity, it seems inappropriate to use that cash for anything other than its intended purpose of protecting the financial strength and resilience of our business,”* the company explained. Serco said this move would save it £12m and it will not pay any executive bonuses, saving the company a further £1.4m. Rather than buying shares for its employee share ownership trust, it will issue new shares instead, saving £15m, though diluting equity in the process. The company added: “In aggregate these actions, along with the VAT deferment, will reduce cash outflows in the second quarter by around £60m compared to our previous plans.” Serco provides services to the public sector in various industries including health, transport and defence.

***The Restaurant Group** was forced to close all 658 of its restaurants and gastro pubs and put thousands of staff on furlough. The owner of *Wagamama* said that ceo Andy Hornby would take a 40 percent pay cut and forgo a bonus of £98,000. Fd Kirk Davis and group non-executives agreed to pay cuts too.

*__Taylor Wimpey__ prepared its Covid-19 defences by cancelling a planned pay rise and bonus payments for executive management, reported *City*

AM. A two percent annual salary increase due to have come into effect on April 1 was cancelled, while executive bonuses were cancelled too. The executive directors took a voluntary 30 percent reduction in base salary and pension contributions for the duration of the lockdown in the UK. The remuneration committee will review this if the lockdown continues beyond June 30. The board supported this reduction in base salary and non-executive directors will take a 30 percent reduction for the same period too. The house-builder cancelled its dividends for the year and drew down £550m in credit facilities to protect its balance sheet against the impact of the pandemic.

*Walmart paid out almost $550m in cash bonuses to hourly employees — including special bonuses to reward its workforce for keeping shelves stocked as customers flocked to stores. The supermarket giant said the bonuses rewarded employees for "performing Herculean efforts" and put money into their pockets. Walmart is in talks to sell its majority stake in **Asda**, the UK's third-largest supermarket chain. The US retailer said it was talking to a small number of interested parties about a possible investment in Asda. It wants to retain a minority stake in the business, two decades after it moved into the British market by acquiring Asda. Walmart's full-time hourly paid employees will get a $300 bonus and part-time hourly employees will get a $150 bonus. Every hourly associate employed by the company as of March 1 qualified.

*Premier Inn owner **Whitbread's** top three directors volunteered for a temporary 30 percent cut in their basic salaries and chairman Adam Crozier took a 20 percent cut. Senior managers will not get their cash bonuses this year – they will be paid via deferred shares. Projected pay rises for senior staff have been jettisoned, but 32,000 hourly paid employees would continue to receive their annual pay rises.

Employer not liable for criminal data leak

In a unanimous decision on April 1 2020, the Supreme Court reversed the Court of Appeal's decision that had found Morrisons vicariously liable for a data breach committed by a rogue employee. The Supreme Court held that the Court of Appeal "*misunderstood the principles governing vicarious liability in a number of relevant respects.*" The Morrisons data breach was the result of the deliberate and criminal actions of a disaffected former employee – Andrew Skelton. Having exploited his legitimate access to Morrisons' systems, Mr Skelton stole and unlawfully published the personal data of almost 100,000 Morrisons employees on a file sharing website, then later sent a copy of the same data anonymously to three newspapers. The published data included names, addresses, gender, dates of birth, telephone numbers, NI numbers, bank account details and salary details. Once Morrisons was alerted to the breach, it quickly took steps to take down the website and alerted the police. The ICO investigated but ultimately decided that no enforcement action was appropriate at the time. Mr Skelton was charged with fraud offences under the Computer Misuse Act 1990 and under section 55 of the Data Protection Act 1998 (DPA), and was sentenced to eight years in jail in 2015. Centre member **Bird & Bird** said: "This has been an expensive and damaging exercise for Morrisons. The initial costs of investigating and rectifying the breach, are likely to have been dwarfed by the PR, legal and other costs associated with the follow-on litigation, irrespective of any damage to its brand and employee relations. Incidentally, whilst the initial claimant pool had swelled to 9,263, almost twice its original size, this is still someway short of the total number of affected individuals. The final ruling in this long-running saga is likely to be of significant relief to employers. The decisions of the lower courts had left employers in the uncomfortable position where they may be held vicariously liable for the acts of rogue employees, even where said employee had been convicted of criminal offences with significant jail sentences attached and had deliberately set out (according the deciding courts) to harm the employer. "This decision may be unpopular with some but does somewhat restores the balance for employers grappling with compliance obligations and the need to observe individual rights and freedoms in the data protection and employment context."

Post Brexit negotiations

Downing Street moved swiftly to rubbish suggestions from Brussels that the UK government should seek an extension to the exit transition period in light of the economic and political chaos created by the Covid-19 pandemic. *Noises off* implied that both sides were looking for a transition deadline postponement, but ministers said they would not have another postponement at any price. Supposedly, the last date on which the UK could formally ask Brussels for an extension to the negotiations is Tuesday, June 30. The UK and EU negotiators plan more online video-link sessions of trade negotiations, on May 11 and June 1, but the sniping continued on both sides. The plan is for dozens of officials to call in from various locations once, or if, serious negotiations get going.

WORLD NEWSPAD

EU clampdown on external takeovers

The European Commission urged member states to preserve companies and assets from foreign takeovers during the pandemic, without undermining the EU's general openness to foreign investment. The Commission issued guidance about foreign direct investment (FDI) and the protection of Europe's strategic assets during the Covid-19 crisis, reported lawyers *Hogan Lovells*. "As in any crisis, the industrial and corporate assets are under stress," a Commission spokesman told the BBC. "The resilience of our industries, their capacity to continue to respond to the needs of EU citizens and the preservation of strategic assets and technology, is key." European companies have long been in the sights of Chinese rivals, including major state-owned enterprises, and the sharp economic downturn and subsequent steep falls in share prices, could make them more vulnerable to overseas bidders.

The Commission singled out the healthcare sector as particularly vulnerable due to the pandemic crisis. However, the scope of the guidance is much broader and relevant to companies in M&A transactions in all strategic sectors involving non-European acquirers: New foreign direct investment screening regulations were adopted last March and can be fully applied from October this year. Italy swiftly extended its *Golden Powers Act* to include the food and health sectors, giving the government a veto over take-over attempts by non-EU states to add to the veto already held over the defence and national security sectors. The guidance urged member states to be "*particularly vigilant to avoid the current health crisis resulting in a sell-off of Europe's business and industrial actors, including SMEs,*" which are crucial to Europe's security and its capability for a fast recovery. The Spanish government imposed a ban on the takeover by foreign companies of companies within its key infrastructure sectors.

EU Council agrees cross-border merger Directive

The Council of the European Union has confirmed the adoption of a new Directive to amend Directive (EU) 2017/1132 on cross-border conversions, mergers and divisions. See https://deloi.tt/35I5zJC. The new rules introduce comprehensive procedures for cross-border conversions and divisions and provide for additional rules on cross-border mergers of limited liability companies established in an EU member state. They provide simplifications that will apply to all three operations, including the possibility of speeding up the procedure by waiving reports for members and employees if shareholders agree, or if the company or any of its subsidiaries do not have any employees. The Directive will enter into force 20 days after its publication in the EU's Official Journal. Member states will then have 36 months to adopt the measures necessary for its implementation. See https://deloi.tt/2OwqVnL

*Amsterdam based **SBM Offshore** reported details of its €150m share repurchase programme for the period March 26-April 1 this year. The objective of the programme is to reduce share capital and, in addition, to provide shares for regular management and employee share programmes. The company's main activities are the design, supply, installation, operation and the life extension of floating production solutions for the offshore energy industry over the full lifecycle. SBM Offshore employs 4,450 people worldwide. €139m worth of its shares have been repurchased so far at average price of €12.37 each

***French pour €4bn subsidies into protecting start-ups**

Paul-François Fournier, head of innovation at France's state-owned bank Bpifrance, is partly responsible for distributing the extra €4bn that the French government has set aside to support start-ups during the coronavirus pandemic. For him, it's a no-brainer that his government is doing the right thing by supporting fast-growing but largely loss-making tech in these difficult times, and that ultimately the country will be worse off if its start-ups flounder and die off in droves: "The start-up ecosystem is starting to have an impact on job creations, on the real economy, and start-ups play a role in helping more traditional industries accelerate their shift to digital," he told *Sifted*. "We're all hands on deck to preserve these dynamics."

The generous French government policy is in marked contrast to those of many other European nations, with countries across southern and eastern Europe giving little specific help to start-ups. In the UK, billions of pounds of funds have been announced to help small businesses, but largely cannot be accessed by unprofitable technology companies — much to the ire of many in the start-up community who are campaigning for a better deal. Meanwhile, in Brussels, start-up associations are starting to try and put pressure on the European Commission to put together a unified response for start-ups across the political bloc. Bpifrance alone financed 4,000 start-ups last year, directly or indirectly, through the 100 or so investment funds it has invested in. While there's no exact measure, it's estimated that there are some 10,000 start-ups in France — that goes to show the extent of Bpifrance's influence. Over the years, the state-backed investor handheld venture capital funds into deploying early-stage, growth money, and more recently bulking up into pan-European powerhouses. The funds typically had an average portfolio size of €80m seven years ago, when Bpifrance was created — that's more than tripled since. "We've been taking these steps with a long term vision of the ecosystem in mind, but we can say our efforts have definitely started paying off already," said Fournier. Before coronavirus hit Europe French start-ups raised €5bn in 2019, according to Bpifrance. Pre-coronavirus forecasts had start-ups creating 25,000 new jobs. While these predictions were upset by the current crisis, the goal is to get back on that path when the storm subsides. The French liquidity plan for start-ups includes a short-term refinancing scheme (€160m), the early payment of some tax credits (€1.5bn), the accelerated payment of already-planned investments in the sector (€150m) and guarantees over cash flow costs (€2bn). Fournier said that this is a temporary liquidity bridge. There's about €10bn of *"dry powder*" in France — money waiting to be deployed into start-ups of different sizes. Venture Capital companies were sitting on lots of liquidity and should be ready to restart investments when visibility improves, he added.

***Elior** will initiate a share buy-back programme during the next 18 months to allocate shares for the implementation of (i) stock option plans or (ii) free share plans or (iii) employee share ownership plans and/or (iv) grants of shares to employees and/or officers of the company or of any related entities; Maximum per-share purchase price: €20 Maximum amount that may be invested in the programme: €340,000,000 Founded in 1991, Elior Group has grown into one of the world's leading operators in contract catering and support services and has become a benchmark player in the business & industry, education, healthcare and leisure markets. Its 110,000 employees feed more than 5m people on a daily basis in 23,500 restaurants on three continents, and offer services on 2,300 sites in France.

US: Abigail Disney, an heir to the Walt Disney fortune criticised the company for protecting executive bonuses and dividends of more than $1.5bn (£1.2bn) while cutting the pay of more than 100,000 employees to help weather the financial impact of Covid-19. Ms Disney, a film-maker and a granddaughter of the company's co-founder Roy Disney, launched a Twitter attack against the world's biggest entertainment group over its treatment of employees. She said the $1.5bn in typical dividend payouts would keep staff paid for months: "*That'd pay for three months' salary to frontline workers and it's going to people who have already been collecting egregious bonuses for years. Dividends aren't all bad, given the number of fixed-income folks who rely on them. But still, 80 percent of shares are owned by the wealthiest ten percent. Pay the people who make the magic happen with respect and dignity they have more than earned from you. This company must do better*."

Top Disney executives have made salary sacrifices – executive chairman Bob Iger gave up the remainder of his $3m salary for this year, while Bob Chapek, who recently replaced Iger as ceo, will forgo half his $2.5m base salary. But Ms Disney tweeted: "Salary is a drop in the bucket to these guys. The real payday is in the rest of the package." The company has protected those lucrative incentive schemes. Iger earned a total $65.6m in 2018 and $47m last year. His latest package is more than 900 times that of the median Disney worker's earnings, which stands at about $52,000. Chapek could potentially receive an annual bonus "of not less than 300 percent" of salary, in addition to a long-term incentive award of "not less than $15m".

Ms Disney said: "I don't have a role with the company. I'm just a citizen who cares. But I am an heir and I do carry this name with me everywhere, and I have a conscience which makes it very difficult for me to sit by when I see abuses taking place with that name attached to them." Suspending the pay of nearly half its workforce will save Disney up to $500m a month across its theme parks and hotels, which have been shut in Europe, the US and Asia for weeks. The decision means Disney staff are reliant on benefits in the country where they work.

*Electric car-maker **Tesla** is reducing staff pay and putting non-essential workers on furlough while production of its vehicles remains stopped due to coronavirus. Work at its factory in Fremont, California halted on March 23. In a letter to staff, the company said it hoped to resume operations on May 4, "barring any significant changes". Most remaining employees will face a pay cut of ten percent, while director pay will be cut by 20 percent and vice-presidents and above will lose 30 percent of their salaries. Tesla's factory in California is the company's only car-making facility in the US, and employs more than 10,000 people.

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