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it's our business

newspad of the Employee Share Ownership Centre

Boris to cut back Entrepreneurs' Relief

The Tory Party manifesto promised a review into the effectiveness of **Entrepreneurs' Relief (ER)**, raising fears that a new incoming Conservative government could either tighten up its qualifying and operating rules, or even scrap it altogether.

ER, which now costs taxpayers **£2.4bn*** a year in lost Capital Gains Tax (CGT) revenue, is under the spotlight because, critics, who include the **Institute for Fiscal Studies (IFS**), claim that it hands out extra cash to already wealthy business owners and does not boost investment.

ER allows qualifying business owners to pay CGT at only ten percent, instead of the normal 20 percent, when they sell all or part of the company - up to a limit raised from £1m to £10m.

BoJo's commitment is to review Entrepreneurs' Relief with the aim of tightening it up: "***We also have to recognise that some measures haven't fully delivered on their objectives. So we will review and reform Entrepreneur's Relief,"*** said the Tory manifesto.

Half of all capital gains on peoples' investments since 2012 have qualified for ER—suggesting that the rules are too lax, said Fraser Nelson, writing in *The Spectator* magazine. In addition, for any incoming government looking for extra revenue, Entrepreneurs' Relief is now attractive low-hanging fruit.

The government came under pressure when **Sir Edward Troup**, former head of **HMRC** urged the government to abolish the relief, which he said was costing the UK more than £2bn a year and which he claimed had "minimal impact on encouraging entrepreneurship." Sir Edward was then backed by the **Association of Accounting Technicians** said that the IFS report reinforced its call for ER to be scrapped and that the money saved should be invested in helping small businesses to start and scale up.

The battle to save ER impacts the SME employee share schemes world because ER is often used by key employees who want to cash in their **Enterprise Management Incentive** (EMI) share options after holding them for two years or more. In so doing, EMI option holders can reduce their CGT bills. In addition, ER can be used as a lever by advisers to encourage more company owners to sell their businesses to their employees via an **Employee Ownership Trust (EOT).**

Investors warned that an overhaul of the ER rules could hamper the booming UK start-up sector. Rob Kniaz, at **Deliveroo**-backer **Hoxton Ventures,** said any changes to tighten rules "*must be done very carefully, in order not to upset the balance of things for legitimate start-ups"*. Moreover, the use of a report by the IFS as a justification for scrapping "is potentially a short-sighted view of the benefits of the relief" according to tax lawyer **Peter Morley** of Centre member **Pinsent Masons** who said: "*Ensuring that entrepreneurial business owners and investors maintain the view that the UK is an attractive place to live and do business is essential to the UK economy*

From the chairman

What is the right true end of employee ownership? I like to think it is what happened to the 300 employees of the New Belgium craft beer company in the United States. They have just sold their company to a sympathetic Japanese acquirer, keep their jobs and pocket $100,000 each. Employee ownership is as much about spreading wealth and reducing capital inequality as it is about working differently. It is for workers more than it is for wonks. The sad tale of Roadchef aside - about which you read almost monthly in these columns - we too have similar history. One of our first employee owned companies, contemporaneous with Roadchef, was Llanelli Radiators. There too in the 1980s the employees sold their business to a sympathetic Japanese acquirer on the basis of a near unanimous vote. They received over £10,000 each which was good money in Wales nearly 40 years ago. Employees should receive capital awards; just as much, companies often need to transform in order to strive and prosper in changed times.

Malcolm Hurlston CBE

and a competitive tax rate on capital gains is part of this. In a world with the technology to allow businesses to be started and run anywhere, it is important that the UK retains an incentive to encourage new and existing business ownership in the UK." He added: "*The economic benefits and tax revenue generated by UK based businesses go far beyond the CGT paid on disposal*." Colin Kendon, partner at Centre member **Bird & Bird** is another strong supporter of ER.

The IFS report suggested that the extra tax relief for company owner-managers was unnecessary. Company owner-managers are responsive to taxes, but changes to income taxes are more likely to result in business owners adjusting how and when they take money out of their company, rather than changing the amount of income they create or how much they invest, it said.

Sir Edward's intervention came in response to a *Guardian* report claiming that the UK's richest people were exploiting the policy to pay only ten percent CGT tax on billions of pounds' worth of capital gains. "This inequity would be almost entirely eliminated by the abolition of entrepreneurs' relief," Troup tweeted. "It gives more than £2bn CGT savings every year to those who have already made their gains and provides no incentive for real entrepreneurship." Troup, who is now a consultant at **McKinsey,** said there was a "very strong case for [whichever party won the election] to ramp down entrepreneurs' relief immediately".

For ER relief to apply, the individual selling the shares must be employed or hold an office in the company or group in which the shares are being sold. Various tests regarding the ownership of the shares need to be met. HMRC data show that 9,000 people paid just £5.1bn in tax on £33.7bn of capital gains income in the latest financial year available.

Mr Morley cautioned against linking profit retention and entrepreneurs' relief. "The tax regime already contains restrictions to ensure that business owners do not retain excess amounts of profits in a company and benefit from capital gains tax treatment on disposal," he said.

**Tax revenue lost is CGT at normal 20 percent, subtracting capital gains taxed at ER ten percent discount rate.*

Pressure builds on HMRC to close Roadchef case

The 350 surviving **Roadchef** Esop beneficiaries hope that beleaguered HMRC may soon be forced to close the long-running saga over whether their compensation pots should be approved with or without tax being levied.

The Roadchef EBT1 trustee, Reed Smith, is adamant that unless HMRC abandons its claim to impose tax on the payouts, it will take HMRC back to the High Court to demand a final judicial ruling.

Audrey McClear, one of the Roadchef Esop participants, alerted *newspad* to HMRC's recent climbdown in the **Rangers FC** '*loans to players*' tax case, after admitting it was wrong to have claimed £50m in penalties from the club's former operating company, which went into liquidation in 2012 and triggered one of the biggest club crises in Scottish football history. Apparently, HMRC has told the club that it should have been charged the much lower figure of £20m instead. The issue, reported by *newspad*, was Rangers' use of Employee Benefit Trusts (EBTs), as vehicles for a tax avoidance scheme - by which players could avoid having to pay Income Tax and NICs - the scale of which was first exposed in 2006, when the club's annual report disclosed that £9.2 m had been paid into the trusts as part of staff costs totalling £28m. Legislation was passed in 2010 to outlaw the use of EBTs as a means of avoiding paying tax in such cases.

Audrey wonders whether HMRC's setback in the Rangers case could accelerate the Roadchef compensation tax settlement. For HMRC is under pressure, too, from another direction - the *Loan Charges* affair. The government-commissioned independent enquiry report into the employment income tax on contractors will be delayed until the new year. More than 30,000 employers and contracted employees, who are still holding out against big retrospective tax bills under the loan charge, are lobbying hard for a reprieve. They are blaming HMRC for several suicides of individuals who could not pay their back-dated bills and penalties for using non-HMRC approved EBT based schemes to accept employee loans on which Income Tax and NICs were not paid.

Meanwhile, the Esop Centre is pushing the newly appointed **HMRC Tax Assurance Commissioner, Melissa Tatton,** to engage fully with the Roadchef Esop scandal. She has accepted that the Centre can represent the Esop beneficiaries, two of whom have agreed already to be represented by the Centre. They want to know whether HMRC's '*Director of Large Business,*' who is handling the Roadchef case, is taking into account **all** relevant factors, not least the High Court's ruling - almost **six years** ago - that the former Esop participants and other Roadchef employees should all be paid promptly substantial compensation for shares which were transferred from one trust to another and eventually sold to the Japanese company, Nikko, in 1998. A post High Court hearing agreement was the Roadchef Esop participants should qualify for 61 percent of the compensation pot; those contemporary employees who did not qualify to join the Esop should get nine per cent and subsequent Roadchef employees should get the remaining 30 percent. In all, about 4,000 employees will be benefit.

Join the throng for 2019 newspad awards

There is still time to enter the *newspad share plan awards* this year. We have **extended the deadline** for nominations by a fortnight to 1700 hrs on **Friday December 13.**

The awards recognise the achievements of companies which offer employee share plans and hold up best practice models for other companies to follow. This year, new categories include: best HR director; best employee share plan practitioner; best executive/managerial incentive plan; most improved step change participation.

Companies can nominate themselves, or advisers can make submissions on behalf of clients.

The award categories this year are:

- Best all-employee international share plan (more than 2,500 employees)
- Best all-employee share plan (fewer than 2,500 employees)
- Best share plan communications
- Best share plan presentation: e.g. new features or new plan
- Best use of technology, AI or behavioural science in employee share plans
- Best creative solutions (taking account of feedback, equality work, cultural and jurisdictional issues)
- Most improved step change participation (best push on comms and/or more generous offer terms)
- Best executive/managerial equity reward plan (involving more than 100 senior employees)
- Best employee share plan practitioner (with examples of client work)
- Best start-up equity incentive plan
- Best HR director (for provision of employee equity)
- Best ceo
- Best chairman
- Company with best programme to encourage employee agm shareholder votes

Application process: please complete both the following stages: a) Online application form - complete all sections of the online form, providing as much detail as possible. (Alternatively, entries can be made by one or two explanatory documents); b) Supporting documentation - where appropriate, please back up your application with supporting documentation. Please read the rules and conditions of entry at www.esopcentre.com/about/awards. If you have any queries, please contact us at esop@esopcentre.com or call +44 (0)20 7239 4971. The winners will be decided by two impartial judges, experts in the use of employee equities, plus Malcolm Hurlston, founder of the Esop Centre. This year, the judges will be joined by Brian Basham, chairman of corporate research company Equity Development and famed City campaigner. Former Times journalist and “still a journalist at heart” Brian was one of the leading players in the great era of contested takeovers and is now a leading campaigner for corporate and other good causes. The finalists will be announced in *newspad* in the New Year and winners will be recognised at the March symposium.

EVENTS

More new speakers for symposium, March 26

Willis Towers Watson director **Damian Carnell**, executive compensation expert and adviser to the **International Accounting Standards Board,** has joined the all-star speaker line-up for the Centre’s fourth British Isles share plans symposium on **Thursday March 26**, in **London** next year.

Damian, who has 25 years’ experience advising leading companies on all aspects of executive compensation and in particular performance pay will speak in the *Executive Reward* segment of the programme on: *Top pay, incentives and the pressing environmental, social and corporate governance (ESG) agenda.*

A major employee share plan case study, promoted by Centre member plan administrator **Computershare** will be another of the highlights at this all day event. This slot will be introduced by experienced Centre conference speaker **Stuart Bailey.** Another new speaker is **Claire Prentice** of **Travers Smith’s** incentives and remuneration team. She will examine *which elements contribute most to effective global equity plans.*

The symposium is being hosted by **Linklaters** at its **Silk Street**, **London EC2** HQ, whose in-house speaker will be **Harry Meek.** His theme will be: *The changing landscape of investor and corporate governance expectations* regarding executive equity reward. Harry will focus on three key issues: *Regulatory developments impacting remuneration in the financial services (FS) sector - challenges to the way banks and FS firms have been operating their incentive arrangements *Listed company investors and corporate governance expectations are catching up, as concepts the FS sector has been dealing with come to the fore, such as: Operating malus and clawback in practice; Use of discretion in determining vesting outcomes; and Measuring non-financial risk and culture as part of incentive plans *Finally, what listed companies can learn from the challenges and developments faced by the FS sector in share plan design and operation.

The event will be chaired and introduced by Centre founder, **Malcolm Hurlston CBE**. He will ask delegates: *How could all-employee share plan schemes be re-set to make them more popular with companies and employees?* Other confirmed speakers at the symposium include:

Colin Kendon, partner (employee incentives) at **Bird & Bird,** will deliver a frank assessment of the popular *Executive Management Incentive (EMI)* share options based approved scheme, which is being operated by more than 10,000 UK SMEs. During his tour of the 'ins and outs' of the HMRC tax-approved scheme, Colin will talk anecdotally about the use of 'Exit Only' EMIs.

David Craddock, who heads his eponymously named worldwide share schemes consultancy, will explain how SME companies are valued, so that employee shares can be issued. David is technical secretary to the ground-breaking *Worked Examples Group* which the Centre administers pro bono.

Martin MacLeod of **Deloitte** will ask *whether recent changes in the UK corporate governance code go far enough on the executive reward front.*

Jennifer Rudman of **Equiniti** will address a key question: *How do you ensure that all employee plans (Sharesave and SIP) continue to be relevant and provide benefits for today's workforce?*

Garry Karch, the leading Esop banker in the UK, will explain *How Employee Ownership Trusts (EOTs) are structured and financed.*

Jane Jevon of **Pett Franklin** takes the dust covers off the *Company Share Option Plan (CSOP), the forgotten share scheme; unlocking its potential and avoiding its hidden pitfalls.*

Robin Hartley, a senior associate at **RM2,** will discuss how best to structure and install *growth shares* in companies.

Delegates from practitioner members will pay **£395** and trustee members will pay **£330** for their seats. Non-member practitioner delegates will pay **£595** (all ticket prices are VAT-able). Plan issuer (non adviser) can attend ***free of charge***. The programme to date can be reviewed and downloaded from the event's page of the Centre website at www.esopcentre.com.

EVENT REPORT:

Guernsey trustees Esop seminar

The keynote speech of **Paul Mark**, US Democrat lead on employee ownership in the Massachusetts House of Representatives, at this year's **Esop Institute/STEP Guernsey share schemes & trustees' seminar** was saved in extremis after he injured his ankle and was unable to take the long haul flight on doctors' advice. Centre chairman Malcolm Hurlston assisted by the STEP Guernsey secretariat, set up a transatlantic phone call, enabling Mr Mark to deliver his speech down the line to enthusiastic delegates. The seminar, on Friday November 8 at the Old Government House Hotel, St Peter Port, gave local trustees access to the Centre's speaker line-up - CMS, David Craddock Consultancy Services, Haines Watts, Pett Franklin and Zedra.

Mr Hurlston told his audience that the Centre stood four square with the Crown Dependencies whose skill base and jurisprudence made an important contribution to the UK. **Elaine Graham,** director at **Zedra,** pointed out changes of focus in the Investment Association's latest remuneration guidelines and the updated Corporate Governance Code, which included reducing executives' cash pension contributions to levels more in line with those of the general workforce and increasing holding and vesting periods for directors' share awards to at least five years, plus an obligatory period for executive directors of holding the shares for (say) two years *after* leaving the job. By talking to the companies, Zedra had discovered tricky areas for them were the changes to recommended pension allowances and post employment shareholdings.

Graham Muir, partner at **CMS,** delivered an update on developments regarding the now controversial **Entrepreneurs Relief (ER),** as amended by the new economic ownership tests. Graham took delegates through the qualifying conditions. Problems for ER users covered: making elections to crystallise gains, dilution of entrepreneurs below a five percent holding, further election to delay tax charge and the meaning of some clauses, such as 'relevant share issue.' Critics claim that ER is not helping to create many new gazelle type businesses and is costing the Exchequer too much and so should be scrapped.

David Craddock took the high ground with *the role for employee share schemes in achieving the UN Sustainable Development Goals.* This is being tackled by the Centre at practical level and delegates found David's overview stimulating. Key issues included whether employee share ownership (Eso) tended to either increase or at least stabilise employment, whether it tended to raise productivity and to raise incomes in a generally non-inflationary manner. The answer was '*Yes*' in each case, which qualified as a UN Sustainable Development Goal. Factors at play were fluctuating income levels (fewer employee shares when times were bad), control over price inflation, co-operative working patterns, enhanced productivity and the avoidance of temporary unemployment. Companies have been slow off the mark with the Goals but the Centre is poised to help when it is time to play catchup.

Jane Jevon made a debut on the speaker panel on behalf of employee share ownership practitioners **Pett Franklin**. The big idea, she said, was to make share schemes meaningful in companies where there was no prospect of flotation or sale. Internal markets in such companies were useful to warehouse shares, to help buy back shares from leavers, creating a window of time for employee share purchases and sales and encouraging employees to acquire the shares if they knew there would be a way out too. Jane discussed that kind of trust it would be best to use; whether to go offshore or onshore, whether to use in-house or professional trustees, funding and reporting requirements. The problem was that assets could remain trapped within the trust if (say) performance conditions for an award had not been met, share price falls put them underwater, over-stuffing the trust, over-restrictive terms of the trust and so on. Varying trust deeds is not that easy; terminating the trust could be even harder. One solution, only for the brave, was to leave them in abeyance, like *Marie Celeste*, as most trusts had a lifetime of 80 or 120 years. The risk of that was a big tax bill further down the line, but that might be better than a smaller tax bill now, without the corporate means to pay it, said Jane. The golden rule was to think carefully beforehand what was the purpose of the trust and to what extent pre-funding was required.

Paul Malin of **Haines Watts** asked a spellbound audience; *Can HMRC ask for that?* The answer was - often - *no*. Under CRS, Schedule 36 specific information and documentation is being sought from advisers. How did we get to this position? What is reasonably required? Does HMRC have jurisdictional rights over the Crown Dependencies? He gave examples showing how poorly drafted some HMRC Notices are, leaving the recipient having to guess what is being asked for! Paul warned that penalties awaited advisers who overcomplied with HMRC requests, for example by surrendering client documents without justification - aggrieved clients could take action if they lost money, through extra tax demands, as a result. The seminar concluded with a networking lunch and discussion of future events on Cayman and in China.

MOVERS AND SHAKERS

On the move

Jim Harra has been appointed as the new ceo and first permanent secretary at HMRC, succeeding Sir Jonathan Thompson. Mr Harra has been covering this role on an interim basis since **Sir Jonathan Thompson** moved to become ceo of the **Financial Reporting Council**. See https://deloi.tt/2NqBJlC. Sir Jonathan promised shareholders better interaction and was tight-lipped about the past at a meeting with UK Shareholders Association.

Leslie Moss MBE, managing partner of the *HR Partners* and formerly human capital practice leader at *Aon Hewitt*, has told the Centre that he is retiring at the end of this year. Leslie, a popular Esop Centre conference speaker, told the chairman: "*Having just turned 67, I have decided to retire completely from HR consulting in general and equity plans specifically from the end of this calendar year. It's been a pleasure working with you over the years - right back from Roadchef with Laurie Brennan. It does feel as though the share scheme world is not as fun as it used to be! Best regards to the Esop Centre and may you long continue to make the case for the transformative impact of employee ownership.*" You can contact him at: leslie.moss@thehrpartners.com

Maoiliosa O'Culachain has a new role as a non executive director at **Kollect,** the Waterford, Ireland, based sustainable waste management company.

UK CORNER

ELECTION:

Parties set out their employee equity stalls…

Labour was quick off the mark to set out its stall on economic policy, including measures to boost employee share ownership in the UK, were it to win power. On the positive side, the Centre found encouraging plans in the package outlined by shadow chancellor John McDonnell in his speech entitled *Rewriting the Rules of our Economy*, which rehearsed Labour's manifesto pledges, such as:

*A plan to consult widely over new incentives to encourage longer-term employee share ownership. In France shareholders who keep their shares for more than two years qualify for stronger voting rights. He said *"In line with our commitment to building a stakeholder economy, we aim to broaden the ownership base of UK businesses to give workers more of a stake in their company. There is evidence to show that this not only advances long term decision making but also boosts productivity."*

- A promise that profit sharing would be demanded of private companies who do not necessarily issue shares
- Legislation to rewrite the Companies Act to force boards to promote the interests of employees and other stakeholders
- The introduction of binding annual votes by shareholders and other stakeholders on company remuneration **reports,** as well as on pay policy (the latter of which is currently binding every three years). At present, shareholders can vote against remuneration reports only to find that the board ignores their wishes, as these votes are purely '*advisory*.'

However, Labour renewed its controversial pledge to introduce **Inclusive Ownership Funds (IOFs),** via which companies with 250 employees or more would be forced to transfer each year, for a decade, one percent of their shares into an employee fund, until the find owned ten percent of around 7,000 UK companies in total. Mr McDonnell reiterated that the shares would be owned collectively by the employees, who would receive distributed dividends worth up to £500 per employee each year. He said: “Independent assessments have estimated that the IOF policy could raise £2bn for workers after five years with an average annual pay-out per worker of £181. Payments above the £500 cap will go to a **Climate Apprenticeship** fund to train the skilled workers needed for our green new deal to tackle climate change.”

Centre member **Clifford Chance** in a paper published last September, estimated that IOFs would cost investors in the region of **£340bn** of lost capital and at least £31bn of that would be borne by pension funds and so ultimately by pensioners, the businesses and by local authorities responsible for the schemes. It said that the benefit of IOFs for employees would be a small fraction of this – around £1bn a year. Over £9bn a year – 90 percent of the benefit - would go to the government. Clifford Chance partner Dan Neidle claimed that IOFs would effectively raise the UK corporation tax rate to over 31 percent, the highest in the developed world. His paper warned: “There are a number of serious legal impediments to implementing IOFs. The proposal would almost certainly face legal challenges in domestic courts, the European Court of Human Rights, and international investment tribunals.”

The shadow chancellor attacked what he termed ‘excessive pay’ enjoyed by senior UK executives. He said: “The pay of the average FTSE100 ceo rose from 60 times their average employee to 150 times in 2017. LTIPs set by remuneration committees have resulted in sharp increases in executive pay and bonus packages in recent years.

“We believe that the wealth of a company is the result of the collective endeavour of all its workers, whether at the top or at the bottom and that wealth should be shared more equitably. That’s why Labour is committed to introducing an **Excessive Pay Levy** on companies and will bring in a 20:1 pay ratio between the highest and lowest paid employees in the public sector. “We will move towards a 20:1 maximum pay ratio between highest and lowest paid employees in companies bidding for *public sector contracts*,” added Mr McDonnell. That would mean excluding all private sector companies who had executives earning more than £330,000 a year from bidding for contracts in those public sector organisations who employ people who earn only the ‘living wage’ of £16,000 a year.

Directors would have to state explicitly in their annual reports that no employee had received less pay during the year than the Real Living Wage, he added.

Esop Centre founder **Malcolm Hurlston CBE**, who co-founded the trades union bank and brought employee ownership plans to Britain, welcomed the plan to boost employee share ownership. He said in a media release: “*The shadow chancellor has spotted that the benefits of employee share ownership have failed to reach all employees and equity rewards have disproportionately benefited the high paid. The need to reach the ‘just about managing’ was paraded by Theresa May on her hustings and we have been waiting for action.*

“*However he should look again at the use of the trust mechanism, which deprives employee shareholders of their natural voting power, follows the fading ‘John Lewis’ model and empowers third parties to vote for them*. There is a case for a Fund, as in Norway and Alaska, *but not at the expense of employees and the wellbeing of their employers.* Many good suggestions may not pass legal tests but he has set the debate alight. We should remember that in office (at the Greater London Authority) his actions were considered and commendable. The current plans bear the inky marks of academic fingers”

Ifty Nasir, writing in *Accountancy Age,* claimed that IOF was effectively a stealth tax for companies, a wealth inhibitor for employees, and a value destroyer for investors. **‘**The Labour Party presents IOF as similar to the *John Lewis* model and a way of sharing company ownership with the workers. However, that’s not true as, under the scheme, employees won’t really own anything, because shares in an IOF cannot be sold. As such, they will not benefit from the capital appreciation in ‘their’ equity.’ IOF has some similarities to an employee owned trust (EOT), which many companies have adopted. EOTs give employees rights to shares and dividends, but only while working for the business. Once people leave, they are no longer shareholders – they leave everything and have no ongoing rights.

Mr McDonnell called for a new model of business to be introduced: “At its heart is our belief that any business should be a partnership between employees, customers, management and shareholders for the long-term success of the enterprise.” He pledged that a Labour government would go after the Big Four auditing firms, who were warned that they would not be allowed to continue acting like a *cartel.*

The shadow chancellor warned regulators that their High Noon was not far off too….. “*There are at least 41 financial sector regulators and a separate set of dispute resolution bodies exists. The public is poorly represented on boards of regulators. The RBS Global Restructuring Group fiasco highlighted flaws across* *the regulatory architecture, including amongst insolvency practitioners*, the collapse of **Carillion** in 2018. Scandals at **Tesco, HBOS** and about tax avoidance have raised serious questions about regulatory negligence. Parliamentary committees and the media are having to fill the gap left by the inadequacy of regulation. ***All in all, regulatory bodies appear to be failing to protect society***. *Labour will legislate to establish a Business Commission, containing a Companies Commission, Finance Commission, and Enforcement Commission. This will close the gaps in regulation and establish and more robust and independent regulatory system*," added Mr McDonnell.

The **Liberal-Democrat** manifesto included a commitment to introduce a **right to share ownership** for employees in firms with more than 250 staff. **Graeme Nuttall OBE,** partner at Centre member **Fieldfisher** played a leading role during the coalition government in setting up a right to request employee shares in an all-employee scheme and the employer's moral obligation to consider such requests seriously, but this only applied to private **unlisted** companies. The new Lib-Dem manifesto mandatory right to request only applies to listed companies (with more than 250 employees) and is a specific right for staff to request shares to be held in trust for the benefit of employees.

Its manifesto promised to strengthen employee participation in decision-making, including staff representation on remuneration committees, and require all UK-listed companies and all private companies with more than 250 employees to have at least one employee representative on their boards with the same legal duties and responsibilities as other directors and to require binding and public votes of shareholders on executive pay policies. The LibDems appear to have been influenced by the narrow views of Ed Davey which are out of kilter with their EU allies' broader approach.

The **Conservatives'** manifesto did not prioritise employee share ownership, but ministers argue that in government the Party has shown already that it is pro Eso. In April 2014, **for the first time in 23 years**, the UK government raised the maximum employee tax-protected monthly investment limit in SAYE-Sharesave to **£500 per month** *(by doubling it from the previous level of **£250**)* and raised the maximum value of tax-advantaged shares an employee can acquire through Share Incentive Plans (SIPs) by £300 a year to **£1,800** for partnership shares and to **£3,600** a year for free shares. It has failed serially as yet to reach the "just about managing". In September 2014, the Tory-LibDem coalition government legislated to set up the **Employee Ownership Trust,** which has to date allowed more than 300 UK privately owned SMEs to convert themselves into collectively-owned trusts. In addition, chancellor **Sajid Javid,** when he was business secretary, expressly reserved a **further** one percent of the equity in Royal Mail for 140,000 employees, in the form of additional free SIP shares, when the last tranche of state-owned shares were sold to investors. He may not want to nationalise like Labour but we will want employees to do better for the holdings which have been put at risk.

Shareholders vote down Kier's exec pay report

Construction giant **Kier** suffered severe reputational damage at its agm where almost **55** percent of the voted shares were cast against a motion to approve the directors' remuneration report for the pay year ended June 30. Shareholder advisory groups **ISS** and **Glass Lewis** had both told investors to vote against approving executive payments at the government contractor's agm. Kier – whose market value fell from around £1bn to less than £200m in a year – paid its board a total of £2.1m in the year to June, when the firm reported losses of £245m. It has admitted to covering its former ceo's home broadband bill in the report which triggered the revolt, although Kier did not pay any bonuses in 2018-19. Its annual report reveals that Haydn Mursell – ousted as ceo in January after a bungled share sale – still took home £423,000, down from £1.5m the previous year. Kier admitted that his package included the cost of a broadband subscription for his personal residence. The cost made up part of £7,000 paid to Mursell in 'taxable benefits', which would include private health insurance and company car use. Kier was only forced to disclose the broadband perk because it continued to pay it to the end of June – *five months after he had left the firm*. Rating agency ISS's concerns centred on the long-term bonuses available to Kier's new top team, who took over in April. Glass Lewis drew attention to the £475,000 salary for incoming finance chief Simon Kesterton, which is 18 percent higher than his predecessor's. His potential bonus awards are higher too. ISS complained that new ceo Andrew Davies, could be paid a long-term bonus of up to 175 percent of his salary – which could equate to more than £1m. Coo Claudio Veritiero left the business amid deepening cost cuts and he will not be replaced. Kier, which is working on projects including nuclear power station Hinkley Point C, said that it would "reflect carefully" on points raised by its shareholders and consult them further about their concerns.

Planet X powers into EO status

Employees at the Yorkshire-based bicycle distributor **Planet X** will soon own the company, announced founder and ceo Dave Loughran. Posting on his company blog, Loughran said: "I'm signing the forms in a week or so and barring last-minute hiccups we become an employee owned company." Planet X is famous for its keenly priced carbon-framed bicycles, with its flagship Pro Carbon road bike retailing for under £800 and which the company boasts is "the cheapest on the market right now." One of the company's early employees was Dave Brailsford, the Planet X export sales manager who later become British Cycling's performance manager, responsible for running the programme that led to Olympic gold medals and a knighthood. In 2016, Brexit was cited as one of the reasons Planet X made almost half of its 118 staff redundant. Turnover dropped to £15m in 2018, but crucially, profits increased to £1.5m. In the year ending March 29 2019, turnover was £12.6m with £1.7m in the bank, and £4m in stock. There was a reported profit of £965,000 and the company's three directors were paid dividends totalling £712,000. Mr Loughran said it was now time to convert Planet X into an employee-owned company. "I've been 'the man' for too long," he concluded. Loughran is modelling the change on an employee share ownership scheme started by fellow Yorkshireman Hugh Facey, founder of wire-tensioning-widget maker **Gripple**. "*Employee ownership provides the opportunity for every employee to have a voice and meaningful stake in the business,*" pointed out Loughran, citing a YouGov survey which found that 44 percent of respondents were more likely to apply for a job at an employee-owned business.

When BS meant something different ...

Centre member **Howells,** the share plans consultancy, announced the introduction of a new **IFRS2 Fair Value** service which is needed because *International Reporting Standard No2* requires a company to take a charge to its income statement for the value of the share awards it makes. To do this a company needs to multiply the number of shares under award by a 'fair value'. Howells has introduced a new service providing fair value opinion. It complements other IFRS2 reporting solutions provided, though deputy chairman Graham Ward-Thompson stresses that the new service could be used just as easily by companies who do not use the firm for share plan administration. "*This stuff isn't particularly straight forward but over the past year or so we've developed our processes to support companies. A year ago "BS" and Monte Carlo meant something quite different to me!*" said Graham. Over the next six to nine months, the share plans world would be seeing more exciting developments from Howells. For further information, contact: Graham Ward-Thompson, Howells Associates Ltd. Phone: +44 (0)7885 060 304. email: graham.ward-thompson@howells-associates.com.

Election delays Loan Charge report until January

An independent report commissioned by the government into the *Loan Charge* employment income tax on contractors linked to several suicides may now not be published until after the January deadline for paying up. Thousands of employers and employees landed with crippling (if not unjustified) tax bills under the loan charge were hoping a review led by former NAO chief **Sir Amyas Morse** would give them a reprieve. It was due to surface at the end of this month but will now go unpublished until after the general election. The charge is being levied on self-employed people who were paid using non-refundable loans, drastically reducing the tax they had to pay. HMRC since ruled this was tax avoidance and ordered thousands of contractors and individuals to pay Income Tax and NICs liabilities up to 20 years into the past. Many claim they did not know what they were signing up to, or were pressured into using the schemes by accountants and employers. To date more than 8,000 individuals and employers have settled their final bills with HMRC, paying up more than **£1bn** collectively, but it is believed that more than 30,000 loan charge accounts, worth more than **£2.2bn** were still unsettled by the end of last month. HMRC has warned them that the gloves will come off if, by early January, they have not settled. The schemes involved 'employees' being paid via offshore trusts, which then loaned them money on terms that meant the debts were unlikely to be repaid. Many were able to cut tax bills by 100 percent, but paid fees of between 11 and 18 percent for admission to the schemes. HMRC argues that because the loans have not yet been repaid, the schemes remain open technically and therefore can legally be subjected to retrospective accrued tax and NICs bills.

*The Upper Tribunal dismissed the taxpayer's appeal against the decision of the First-tier Tribunal on the application of the **employment intermediaries' legislation (IR35)** to a BBC tv presenter, who had a seven year contract with the BBC requiring her to work 225 days per year and terminable only for a material breach. The First-tier Tribunal held that, had she provided her services directly under the terms of her contract, she would have been regarded as an employee of the BBC. This was on the basis of mutuality of obligation; sufficient control of what, when, where and how she performed her role and the fact that the company had to provide the presenter concerned, and not a substitute. The appeal to the Upper Tribunal was made on the sole ground that the First-tier Tribunal had erred in law in its conclusion that the BBC had sufficient control over the presenter to mean that an employment relationship would have arisen if the services had been directly supplied. The Upper Tribunal held there had been no such error. See https://deloi.tt/2N1XXLH. Employment tax specialists have reservations on certain aspects of the decision, particularly an apparent failure to distinguish the significance of controls over editing/broadcasting (the work of the BBC) from controls over presenting (the work of the presenter). It remains to be seen whether permission will be sought to appeal any further.

***Contested tax scheme cases must go to tribunals**

Users of failed UK tax avoidance schemes cannot bring proceedings in the High Court in England where time limits for a tax tribunal claim had passed, as that would be an abuse of the process, the **Court of Appeal** ruled. "*This decision confirms the reluctance of the courts to allow tax claims to be brought anywhere but the tax tribunals, or by judicial review in the Administrative Court where appropriate, where in both cases tight time limits apply*," said Steven Porter, tax disputes expert at law firm and Centre member **Pinsent Masons**. Several hundred individuals who had participated in film schemes and other tax schemes claimed that there had been procedural errors in enquiries by HMRC into their claims for carry-back loss relief. Although other proceedings had decided that the relevant schemes failed to generate the intended losses, they claimed that HMRC's procedural errors meant that they were entitled to the tax relief claimed. The claims were brought in civil proceedings in the High Court and some claimants tried to bring judicial review proceedings too. "It is well established that if Parliament has laid down a statutory appeal process against a decision of HMRC, a person aggrieved by the decision and wishing to challenge it *must use the statutory process*. It is an abuse of the court's process to seek to do so through proceedings in the High Court or the County Court," said Lord Justice David Richards, giving the judgment of the Court of Appeal. Referring to a House of Lords decision in 2006 concerning **Autologic Holdings,** he said that where HMRC had opened an enquiry, taxpayers were *required* to pursue appeals to the First-tier Tribunal (FTT) unless special circumstances existed. He said there were no special circumstances in this case and the fact that taxpayers were out of time to pursue FTT appeals did not justify a challenge by civil proceedings. "Parliament has laid down an exclusive appeal process and time limits for invoking it. If those time limits have expired, and are not or cannot be extended, the clear legislative intention is that it is too late to make any challenge," the judge said. Judicial review was the appropriate way for those who had participated in tax schemes through partnerships to challenge notices *amending their tax returns, as the individual partners had no right to appeal against those notices*. Time limits were a strong factor in favour of judicial review being the correct procedure, rather than ordinary civil claims. The Court said that the claims the taxpayers were seeking to bring in the High Court lacked any merit. The Court of Appeal said that even if it was wrong in concluding that the High Court proceedings should be struck out as an abuse of the process of the court, they should in any event be struck out as unsustainable in law. The Court said it had effectively heard the judicial review application itself and dismissed it.

Hard Brexit threat in one year's time

A *Hard* Brexit by the end of next year may be difficult to avoid, despite the assurances given by PM Boris Johnson, predicted Centre legal member **Travers Smith.** In a major article published by the website *Lexology*, the corporate law firm claimed that the December 31 2020 deadline by which the UK would have to agree a deal with the EU on the future relationship, was "unrealistic" - *a polite legal way of saying "fantasy."*

The starting gun on the general election had scarcely been fired when the threat of a *Hard Brexit* re-emerged from the shadows, despite the historic passing of the second parliamentary reading of the government's EU Withdrawal Agreement Bill (WAB).

At the Downing Street lobby briefing on November 5, ***the Prime Minister's spokesman ruled out MPs being given a vote on whether or not to request an extension to the Brexit transition, which is due to finish at the end of next year.*** The government is ruling out an extension, even though many people assume an extension will be necessary. Asked if MPs would be allowed a vote on an extension, the No 10 spokesman told journalists: "*The answer to that is a simple no. We aren't extending the implementation period. There is no reason whatsoever why we will not secure a deal by that date. Both the UK and the EU are committed to reaching a trade agreement by that date and that is what we are going to do."*

Brexit in January 2021 wouldn't lift the fog over UK markets, companies and advisers were told at the ***Reuters*** Investment Summit in London, as reported by Centre member **Baker McKenzie**. Speakers feared the new January 31 Brexit deadline only marked the start of a new headache — negotiating a lasting trade relationship with the EU by December 2020, when the transition period agreed with Brussels ends. Following that, trade deals must be struck with the rest of the world. If that takes more time than expected, it could lead businesses to hold off on much-needed investment, weakening growth and hurting markets even more, investors told the summit.

David Gauke, the former justice secretary who was one of the 21 Tories who had the whip removed over Brexit, said that, without an extension, the UK would face a no-deal Brexit in December 2020. "*If there's no extension of the transition period, there's no chance of a free trade agreement being negotiated in time. It means WTO (World Trade Organisation) terms for the UK by Jan 2021. This would be a very bad outcome for many sectors*." He said the new No 10 line directly contradicted what Robert Buckland, Gauke's successor as justice secretary, had told MPs only weeks ago about how MPs would get a vote on an extension: "*It was a clear promise. As Mr Buckland said: 'Parliament has a legitimate role to play'. I agree. Looks like the Conservative message is 'we'll be out on WTO terms by 2021.' I have to say - that is reckless*," added Mr Gauke, who is an independent candidate for his old seat in the general election. WAB fell on the dissolution of parliament for the general election, but was expected to return to parliament immediately afterward *if* the Conservatives were to form the new government.

Unusually, the *Lexicology* article was not signed by any Travers Smith partner – it was presented as an 'in-house' view of ***what the firm's multinational UK corporate clients believe is an alarming situation.*** It said: "Let's assume that polls suggesting a Conservative majority turn out to be correct. In that case, the expectation would be that the new government would be able to secure the passage of its Bill implementing the renegotiated draft Withdrawal Agreement. Then the UK has a transition period until December 31 (2020) Is that deadline realistic? *Just for once, even though we are talking about Brexit, there is a straightforward answer:* ***No.*** Here's why: Michel Barnier, the EU's chief negotiator, has recently suggested that the UK may need an extension of the transition period to allow time to complete the negotiations. His comments were echoed by outgoing Commission president Jean-Claude Juncker. If an extension is to be put in place, the draft WAB makes it clear that **this would need to be agreed with the EU by July 2020**.

"The UK government, however, is insisting that there is no need for an extension and that the future relationship can be negotiated in time for the UK to exit the transition by January 1 2021. It argues that, because the UK and the EU are already closely aligned, a free trade agreement should be quite straightforward to negotiate. It points to its success in achieving a relatively swift renegotiation of the Withdrawal Agreement as an example of how progress can be made relatively quickly.

"Most trade experts disagree with the government's assessment, pointing out that this trade agreement will be unusual in that the UK is looking to **diverge** from the EU in future and in some areas raise barriers to trade – whereas normally, trade agreements focus on areas where the parties are looking to **remove barriers**, including agreeing to **align** their regulatory approaches. A further reason that trade agreements typically take time is their length and complexity. Both the EU-Canada and EU-South Korea free trade agreements, which the parties may be looking to use as precedents in order to speed up the drafting process, run to *over a thousand pages*. Regarding services, which account for over 70 percent of the economy, the UK would have a strong interest in negotiating a higher level of access than is provided for in those agreements, which would add a further layer of complication (although it is not clear that the government intends to seek a significantly higher level of access for services). Lastly, whereas the UK government is correct to point out that negotiations on the latest deal were concluded relatively swiftly, the vast majority of the Withdrawal Agreement was left unchanged and the amendments to the Irish protocol drew heavily on previous discussions between the parties about alternative ways of dealing with the Irish border issue. Comparing that fairly limited renegotiation with the process for agreeing a comprehensive free trade agreement is of doubtful value. "*In light of these factors, our view is that it is likely to be very challenging to get a comprehensive free trade agreement agreed with the EU by December 2020. Even if a deal is agreed by December 2020, it is unlikely that the UK will be ready to implement it from January 1 2021.*

"To take just one example, major changes would be required to border formalities and checks, likely to require significant changes to IT systems and infrastructure; these will be difficult to prepare for fully until all the detail of the future relationship with the EU has been finalised. The UK could fall back on its planning for no deal – *but one wonders what the public will make of a situation where the government says it has agreed a deal on the future relationship (supposedly allowing for a "smooth and orderly Brexit"), yet the actual outcome is a level of disruption similar to that which would arise in a no deal situation.* At least in a no deal scenario, the government will have the option of blaming the EU – but if it exits the transition with a deal on the future relationship without having prepared for it adequately, it will only have itself to blame. **All this points, in our view, towards an extension of the transition period being sought in July 2020**''

Travers Smith therefore told its clients: "**Businesses should not abandon their efforts to prepare for a no deal Brexit outcome** because, even if a deal were reached with the EU on the future relationship, this be only likely to be possible by January 2021 if it were very much at the harder end of the Brexit spectrum. For certain sectors of the economy (such as EU-UK trade in goods), this would likely to be almost as disruptive as *no deal* and therefore no deal planning would still be needed. In the event of *no deal*, UK companies operating **employee share schemes** within the EU will be subject to an EEA regime that may require them to publish a **prospectus**, said Mahesh Varia of Travers Smith. If equivalent exemptions are not available to UK companies, then they would be in the same position as third country issuers and might need to reconsider how to structure their ***share incentives*** for EEA employees in a way that avoided the need to publish a full prospectus. EU regulations currently ensured that internationally mobile individuals working within the EEA only paid social security contributions in one jurisdiction. "*Hopefully steps will be taken to ensure that an individual will only be subject to one social security regime when working in the EEA. There are a number of important exemptions from the prospectus requirement including one applicable to employee share schemes. Hopefully, UK companies will be able to continue to offer shares to employees within the EEA without having to publish a prospectus,"* added Mr Varia.

***** City minister, John Glen confirmed before the election campaign that during the recent re-negotiations with the EU, Mr Johnson's government had not sought to improve the text of the **Political Declaration** relating to financial services (**FS**). Mr Glen said: '*The revised Political Declaration is unchanged for financial services. It gives us the basis from which to build a strong and mutually beneficial* *future relationship…'* and that *'Both sides remain committed to concluding equivalence assessments by June 2020.'* The minister referred to the **Financial Services Bill** which had been included in the Queen's Speech, but gave no further information of substance. Mr Glen's letter to the HoC European Scrutiny committee confirmed that in accordance with the Political Declaration, the UK and EU would begin to assess *equivalence* in FS**,** as soon as possible after Brexit, with the aim of concluding these assessments before the end of June 2020, reported Centre member **CMS Cameron McKenna Nabarro Olswang**.

*If UK businesses receive **data** - perhaps lists of names and addresses of customers - from a company in the EU or the wider European Economic Area (EEA) they may need to take action, depending upon whether or not the WAB gets through all its parliamentary stages before January 31. The government advice is to *"review your contracts and, where absent, include Standard Contractual Clauses (SCC) or other Alternative Transfer Mechanisms (ATM) to ensure that you can continue to legally receive personal data from the EU/EEA."* The gov.uk site then sends enquirers over to the Cheshire based **Information Commissioner's Office** to find a handy interactive tool which will allow them to work out just how to craft one of these contracts. The government site said: *"You can't ignore the problem. If you fail to act, your organisation may lose access to personal data it needs to operate."*

For the time being, data can flow freely across the EU as long as companies conform to its tough new **General Data Protection Regulation (GDPR)**. As GDPR is being incorporated wholesale into UK law, there should be no real change after Brexit - *as long the UK leaves with a deal*. However, if there is no deal, the UK will be treated as an external country, needing what is called an *adequacy ruling* showing our data protection standards are up to scratch - and the European Commission indicated that this would not happen in a hurry.

Guernsey** and **Jersey** believe they are bomb-proof regarding two-way data transfers even after any still possible *Hard Brexit.* Lawyers *Collas Crill* said: A 'no deal' Brexit might well compromise the transfer of data between the UK and Europe. However, regardless of whatever form the outcome of Brexit takes, Jersey has agreements in place to ensure it can trade data with EU members and the UK. In 2018 Jersey adopted the Data Protection (Jersey) Law 2018 which ensured that the island maintained an ***equivalence standard with GDPR to ensure that data could continue to pass from the EU to Jersey and vice-versa. Ditto **Guernsey.** Guernsey too signed an MoU with the FCA about continuing to use the UK's National Private Placement Regime after Brexit. Guernsey has agreed to the extension of the

UK's membership of the World Trade Organisation (**WTO**) so that it includes Guernsey. This is intended to provide trade security for imports and exports of goods and services between Guernsey and the EU (and the rest of the world). Guernsey (together with other Crown Dependencies) signed up to a customs union with the UK which covers all trade in goods which eliminates any customs duty on imports and exports within the union, and adopts a common customs tariff in relations with third countries, to ensure trade between the UK and Guernsey is unaffected by Brexit.

*The UK's financial services regulator will be seeking equivalence on an *outcomes basis* once the UK leaves the EU, rather than pursuing line-by-line regulatory alignment, the **Financial Conduct Authority (FCA)** indicated. In a speech, FCA director Nausicaa Delfas emphasised the regulator's intention to continue to work closely with its European counterparts, "regardless of when and how we leave the EU". The FCA expects to see integration of UK and EU financial markets increase in some areas, although it anticipates some markets may fragment, with implications for our common supervisory approaches, she said. The UK's financial services regime would be the most equivalent in the world to the EU's on day one following Brexit, from which point both the UK and the EU would have to make decisions on equivalence on a case by case basis, reported Iain Sawers, partner, at Centre member **Pinsent Masons.** Areas in which the FCA is anticipating that it will continue to engage with the EU's future regulatory agenda include the EU capital markets union project, investor protection standards, sustainable finance, anti-money laundering, financial innovation and the future regulation of crypto assets, Delfas said. She acknowledged that the UK "may have some flexibility around EU rules we have on-shored" in future, particularly where experience shows them not to be working efficiently or effectively. It would consider these issues as part of its ongoing review of UK regulation, she said.

*The **Transition Period** (until December 30 2020) creates a legal standstill so that for most purposes the legal framework would not be changed, but the UK would have no representation in the EU, said Centre member **Bird & Bird**. The operative date for most of the changes to be introduced by Brexit would be the end of the Transition Period, rather than the date the UK leaves the EU. The Transition Period would give tech companies time to prepare but they should be aware of the issues and be making appropriate preparations. The key issues included: **Trade, Tax and Tariffs:** Tech companies should review their international strategies to determine whether, and to what extent, they continue to use UK group companies as a gateway to the EU. Tech companies needed to consider their trading position under WTO rules. Businesses should review their supply chains. WTO rules eliminate tariffs on a broad range of high technology products including packaged software and computer hardware. Under the General Agreement on Trade in Services the international sale of services between WTO members are tariff-free. For **EU to UK data transfers**, the EU considers that post-Brexit transfers of personal data from the EU to the UK will be a transfer to a *third country* requiring an adequacy decision. Until this is achieved, the normal adequacy *toolbox* needs to be used - the EU standard contractual clauses, binding corporate rules, or the various derogations for specific situations allowing data transfers (e.g. explicit consent or contract performance). For **UK to EU data transfers**, the UK has stated that EU laws will be adequate. Assuming this remains the case, transfer adequacy mechanisms will not therefore need to be deployed for UK to EU data transfers. **Personal data transfers** to other jurisdictions will need to be compliant with the Data Protection Act 2018 obligations. Essentially these are as per the pre-Brexit position. The UK and the US have agreed on measures to enable the EU-US Privacy Shield to be used to legitimise UK to US transfers post a no-deal Brexit. On the choice of governing law in **contracts**, the UK government has indicated that the UK courts will continue to apply the principles set out in Rome I and Rome II, the EU Regulations which currently govern the choice of law of contractual and non-contractual obligations.

*The latest EY survey indicated that 40 percent of firms plan to move some of their operations and staff out of London, while 60 percent of larger firms have announced such moves, said **RBS** chairman and former accountancy chief **Sir Howard Davies.** The number of jobs that are to be moved from London to another European city is **only 7,000**, far lower than estimates made a couple of years ago. However, firms confirm that they are likely to move *assets* out of the UK on a large scale. The latest estimate is that around **£1tn** of assets under management may move to other centres when the UK leaves the EU. Those responsible for these assets will remain in London for now. A second data point suggests London's reputation is beginning to suffer. The **Z/Yen** consultancy publishes a *Global Financial Centres Index* every six months and the latest ranking, in mid-September, showed that while London remains second only to New York globally, its relative position has been slipping. New York's lead has more than doubled in the last six months. London's relative decline has been sharper than any other of the top centres and Paris has moved up. Indeed, the gap between London and Paris has fallen to 45 points from 88 points in March (the top mark is just below 800). The **European Banking Authority's** move to Paris and **Bank of America**'s decision to relocate its euro trading there are probably the main factors behind that change of perception. Even Italians and French who have been asked to relocate to Milan or Paris are often reluctant to agree. More significantly, perhaps, a global market is a complex ecosystem. The traders may move but will the IT infrastructure and support be as sophisticated elsewhere as it is in London? Will skilled consultants and lawyers be available on demand, as they are in the Square Mile?

Living Wage rise signalled

More than 210,000 employees at major companies including **Ikea, Aviva** and **Nationwide** are in line for a pay rise after campaigners announced a rise in the voluntary **UK Living Wage**. The pay benchmark, which has been adopted by almost 6,000 companies, will rise by 3.3 percent from £9 to £9.30 per hour, with the London rate increasing by 20p or 1.9 percent to £10.75. Participating employers have until next May to put the new pay rates in place, according to the **Living Wage Foundation (LWF).** The new rate was announced as major political parties made low pay a key battleground in the general election. Chancellor Sajid Javid pledged to raise the current **National Living Wage**, the re-branded former minimum wage, from the current £8.21 an hour to £10.50 in five years' time, while Labour pledged an immediate rise in the rate to £10 an hour if it wins office. The LWF's £9.30 rate – assessed independently based on the cost of a basket of goods and services – is paid by participating employers to those over the age of 18. The government's rate is based on a target of 60 percent of median earnings by 2020 and the top rate only applies to workers over 25. LWF said the faster rise in private rental and childcare costs outside London was behind the UK rate seeing a bigger rise than the capital. According to research by accountants KPMG, 5.2m UK jobs are still paying less than the real Living Wage. The research highlighted a North-South divide, with Northern Ireland having the highest percentage of jobs paying below the Living Wage on 23 percent. The South East had just 15 percent below.

Who is fooling whom?

Standard Chartered** stands accused of ‘gaming the system’ after apparently climbing down over its plan to give its ceo **Bill Winters** a cash pension contribution equivalent to 40 percent of his £1.15m basic salary – the highest for any top executive at a publicly listed UK bank, including Antonio “two pensions” Horta-Osório at **Lloyds** – and a much higher ratio than the rest of the workforce receives. Six months after almost 40 percent of shareholders voted against the deal, Winters was finally forced into a climb-down – of sorts, wrote *Ben Marlow* in *The Telegraph*. While the bank agreed to halve Winters’ pension allowance from £474,000 to **£237,000 per year**, it stuck stubbornly to its methodology for calculating the figure, despite this being the main reason for shareholder anger. There was outrage over an *FT* interview article in which Winters criticised shareholders. “Picking on individual pension arrangements… and suggesting that there is some big issue there is immature and unhelpful,”*** he actually told the newspaper. However, instead of calculating the payment as a percentage of *base pay*, Standard Chartered (SC) threw his fixed pay allowance into the mix to take his total salary to £2.37m for last year. This conveniently makes it look like Winters is receiving a much more acceptable amount, one that is in line with other employees and the **Investment Association**’s new guidelines on executive packages. “*It’s nothing more than smoke and mirrors again. Whereas before the bank tried to claim that he stood to receive a 20 percent pension payment, rather than 40 percent, now it wants investors to believe that he will get 10 percent, when in fact it’s really 20 percent,”* wrote Marlow. “If Winters had lived up to the superstar reputation he arrived with from JP Morgan in 2015, by producing record results the bank would have had some excuse, but despite Standard Chartered’s big exposure to the high-growth markets of Asia, the Middle East and Africa, its share price has shrunk by a quarter during his reign. *The bank’s half-baked response, which has taken six long months, is reminiscent of how Lloyds reacted to anger over Horta-Osório’s pension. A £154,000 cut to his annual contributions was offset by a £175,000 jump in other elements of his pay, a bizarre piece of tokenism that sparked more outrage. Companies that try to game the numbers are taking shareholders for fools,”* added Marlow.

SC fd Andy Halford’s pension contribution will be cut too, from January 1 next year - from £294,000 to £147,000 using the same criteria. Standard Chartered claimed that this amounted to a reduction of eight percent in fixed pay (*salary plus pension allowance*) and would lead to a reduction of eight percent in the possible maximum bonus and total pay he could receive.

Incentive payouts boost top UK reward packages

The average reward package for 22 top UK executives came to £3.28m and the median (midpoint) figure was £1.94m in the final tranche of executive pay deals in the recently completed 2018-19 corporate reporting season, reported by Labour Research Department - an independent researcher not part of the Labour party. Darren Throop, founder and ceo of **Peppa Pig** owner **Entertainment One**, topped the table with his **£15.24m** package equating to £293,040 a week. In the eight-figure bracket too, Ivan Menezes, ceo of drinks multinational **Diageo**, had a remuneration package of £11.65m in its most recent financial year. Cfo Kathryn Mikells received a reward package worth £7.03m or £135,190 a week. Year-on-year comparisons made for 21 of these 22 executives saw 13 up their annual remuneration packages, with increases ranging from 719 percent down to six percent. That’s at a time when official data showed average weekly earnings in the UK economy were rising by at most four percent. Darren Throop topped the risers as his 719 percent reward increase came on the back of a “special award” of shares worth £13.18m. Billionaire businessman Mark Coombs, ceo of investment manager **Ashmore**, took second spot with a 161.5 percent increase. His package in the year to June came to £3.61m or £69,330 a week.

State sector troughing

A principal who spent £150,000 of expenses from her further education college on luxuries including designer headphones and fine dining is to retire. Stella Mbubaegbu, 64, principal of Highbury College in Portsmouth, is stepping down next year after ministers said they were “deeply concerned” about her expenses claims. Over the past five years, she spent more than £135,000 on accommodation, travel and food and drink, according to corporate credit card receipts obtained by the magazine *FE Week*. Freedom of Information requests revealed she used the college’s money to take first-class flights, stay at five-star hotels around the world and travel in luxury chauffeur-driven cars. The revelation came after Highbury College announced plans to close its sixth form amid deteriorating finances. The college, which previously had an “outstanding” rating, was last year downgraded to “requires improvement” by Ofsted. Inspectors noted that “leaders and governors have been slow to reverse the college’s decline in performance.” Ms Mbubaegbu, who has held her job for 19 years, said her decision had nothing to do with her expenses. She told TES: “My expenses have been duly approved, accounted for and audited.”

Legal change needed to force profit sharing - claim

UK companies should be forced to share rising profits with their employees through a change in the law, a think-tank report urged. The **Social Market Foundation** said the government should tighten corporate governance laws to ramp up the pressure on ceos to pay staff higher wages. In a package of recommendations to force businesses to do more to support workers, the SMF said a new duty should be imposed on company directors. It said changes to Section 172 of company law should be made to make sure that employees, at all levels of a company, share in the proceeds of growth. Firms should be forced to write reports explaining pay decisions and strategies for wage and career progression, according to a report warning that politicians, firms and investors needed to make talk of socially responsible capitalism a reality. The report from the cross-party think-tank came after a lost decade for wage rises in the UK. Average pay after inflation is barely higher today than it was before the financial crisis. The government has made several above-inflation increases in the minimum wage in recent years and promised to take the legal minimum to £10.50 by 2024. However, a record 439,000 people were illegally paid below the minimum wage last year, while as many as six million people in the UK are paid less than the real living wage – a voluntary minimum paid by more than 5,000 companies designed to reflect real living costs that is currently set at £9 in the UK, but £10.55 in London. Louise Woodruff, the policy manager at the Joseph Rowntree Foundation, which supported the SMF research, said it was unacceptable that Britain could have both record levels of employment and four million workers trapped in poverty. "Work should provide a route to a better life, but low pay, insecure hours and lack of progression opportunities are holding people back," she said.

*The intervention came after the ceos of 181 of the US's biggest companies changed the official definition of "the purpose of a corporation" from making the most money possible for shareholders to "**improving our society including for the benefit of staff and the environment.**"*

Nicole Gicheva, a researcher at the SMF, said: "Too many British workers are still trapped in low pay. Sensible policies can help all businesses take responsibility for helping staff out of that trap through better-paid work and more training. The best employers already know that paying and training staff well is good for business: they keep workers for longer and get more out of them. Corporate governance laws should be updated to encourage all firms to meet the standards set by the best."

COMPANIES

***Associated British Foods (ABF),** which owns **Primark**, said it would cut executive pension contributions following a backlash from shareholders, after it posted a drop in profits. ABF said new directors joining it will receive smaller pension contributions "to align [it] with other UK employees". The discrepancy was flagged by a number of investors, ABF said in its annual report. However, serving top executives will still be paid the same, which raised eyebrows. Investors will have a say on the changes at the December 6 agm. ABF plans to award future bonuses without including the performance of its volatile sugar arm, which has been denting group profits. Ceo George Weston said: "Management does not control the profitability of sugar. It's unfair to penalise them [directors] if the [world] price is down or reward them if the price is up."

***Bank of America** plans to pay its employees bonuses for the third successive year. After reporting record earnings in four of the past five quarters, it will give $1,000 next month to all eligible employees who earn less than $100,000 pa and it will give stock to those who earn more. The payouts will reach 95 percent of the workforce. The three years of bonuses so far are costing BoA $1.6bn said the Bank. Ceo Brian Moyniham acknowledged that President Trump's **Corporation Tax** cut had helped the bank record record results, but claimed its performance had helped too.

***Capgemini** announced that its sixth employee share ownership plan was significantly oversubscribed, allowing 33,700 employees in the 25 participating countries to acquire 2.75m shares at €92.27 each, representing in total 1.6 percent of the group's share capital. The plan, aimed at associating employees with the development and performance of Capgemini, a global leader in consulting, technology services and digital transformation, attracted participation from 16 percent of the group's eligible headcount. This new Esop will help maintain employee share ownership at above five percent of Capgemini's total equity.

***CBS** acting ceo Joe Ianniello is in line for a *very* large windfall when **Viacom** completes its proposed merger with the broadcaster network. While he won't lead the combined entity, he'll collect **$100m** severance and remain CBS chief with a new contract entitling him to tens of millions of dollars more. The arrangement illustrates the extent of CBS's effort to persuade Ianniello, a company veteran with 22 years service, to support the tie-up without having a shot at the top job. When two companies merge in the US, the ceo who isn't picked to lead the combined entity often leaves. Accepting a lesser job in the new organisation is unusual. To ensure executives won't fight bids from rival companies solely to protect their jobs, their contracts typically offer generous benefits, including severance and early payouts of unvested stock awards, if they're dismissed within a year or two after a merger. Ianniello's deal is structured differently. Once the merger closes, he'll get **$79m** in cash and about **$20m** in equity. He'll begin a new 15-month contract, still as head of CBS, but reporting to Viacom ceo Bob Bakish. Ianniello's deal further entitles him to an estimated **$22.5m** in salary and bonuses and a stock grant worth **$17.1m** based on recent closing prices.

*Property developer **Hammerson** is continuing to consult shareholders after two resolutions, including its remuneration report, faced investor backlash at the company's latest agm. The shopping centre landlord, which owns Birmingham's Bullring, said that the remuneration report was approved by shareholders, but noted that almost **30 percent** of the votes were cast against the policy. Ahead of this year's agm, shareholder advisory groups had urged investors to reject the report due to concerns over stock awards and bonuses paid out to the developer's executives. "*A consultation with major shareholders and voting advisory agencies on the proposed remuneration policy is underway to ensure that executive reward continues to be aligned with shareholder interests*," the company said. The resolution to allow Hammerson the authority to allot shares passed too, however 30.2 percent of votes received were against. "The board is aware…that certain overseas institutional investors have a policy of not supporting this authority for the directors to issue shares," the company said. It added that it considered the flexibility afforded by this authority was in the best interests of the company and shareholders.

***Huawei** will pay out Rmb2bn ($286m) in bonuses and double almost all employees' monthly salaries for October as a reward for helping the world's largest telecoms equipment maker counter US sanctions imposed by the Trump administration, reported Investors' Chronicle. Huawei Technologies, majority employee owned and the world's largest telecoms equipment maker, will double staff salaries in October to thank its over 190,000 employees for enduring the Trump administration's blacklisting of the Chinese company for allegedly spying on behalf of Beijing. "In 2019, the company and all employees were, and are, facing extraordinary external challenges," said an internal message to staff obtained by the Nikkei Asian Review. "Upon approval by the company's president, a special dedication award will be paid." The bonus, which is the latest step taken by Huawei to shore up its image at home and abroad as Washington has cracked down on the company, will be distributed to all active employees of Huawei and its direct subsidiaries with a performance rating above C and no information security violations, the memo said. The bonus will be equal to each staff member's base October salary. Huawei, which is the world's second biggest smartphone manufacturer has become a focal point in the dispute between the world's two biggest economies as they jostle for global economic, financial, military and technological supremacy. Washington alleges that Huawei collects information for Beijing, allegations that Huawei has consistently denied.

***Nationwide Building Society** ceo Joe Garner is slashing his own pension perks in a move that will pile pressure on his rivals. Garner last year received a £292,000 (33 percent of his salary) cash contribution towards his pension, but this is being halved to 16 percent from 2021, leaving him with a £141,600 cash contribution annually by then. The move is part of wider cuts to the Nationwide pension scheme and will mean his retirement perks are proportionate to those enjoyed by other staff, who will get an employer's contribution of 16 percent of salary paid into their pensions. Nationwide, once the Co-operative Building Society, hopes that reducing Garner's pension contribution will allay staff concerns after talks began recently about moving 5,444 members from its generous final salary scheme into a less generous 'defined contribution' plan.

*House-builder **Redrow** suffered yet another investor revolt at its agm after making it easier for its senior executives to earn LTIP bonuses. More than **30 percent** of shareholder votes went against the directors' remuneration report after investor advisory groups like Glass Lewis took issue with Redrow for lowering earnings targets that executives must hit to achieve the long-term incentive payments. The company said it had lowered objectives for its executives because of changes to the government's *Help To Buy* scheme – which will now only be available to first-time buyers – and 'macroeconomic uncertainty'. ISS recommended a vote against executive pay at Redrow because of the historic LTIP payment Steve Morgan received last September, who stood down as chairman of the firm in March. More than **31 percent** of the voted shares went against John Tutte, the former ceo, paid £1.9m last year, who has replaced Morgan as chairman. Both advisory groups ganged up on Tutte because they said he was not sufficiently 'independent' to oversee governance of the firm. Nevertheless, the company said after the meeting that it would carry on with its plans as before. A Redrow spokesman said: *'We are aware of, and take seriously, the issues raised. We have actively engaged with our shareholders and continue to be in dialogue with them.'* House-building executive bonuses have been hugely controversial in recent years. Boosted by the government's Help To Buy scheme, Redrow's rival Persimmon paid its former ceo Jeff Fairburn around £75m in bonuses in two years, reduced - after a public outcry - from **£110m**, for which he had qualified from an uncapped LTIP.

***Richer Sounds** published gloom-defying results for the period before its founder announced that he was handing control of the television and hi-fi retailer to its employees. The company reported pre-tax profits up

18.6 percent to £8.3m in the year to the start of May, on revenues of £171.2m, according to its latest filings at Companies House. Founded by Julian Richer as a shop in London in 1978, Richer Sounds now has 53 shops and 522 staff. Last May he said that he was giving employees £3.5m in bonuses, with an average payout of between £8,000 and £1,000 for each year worked in his shops. He put a 60 percent stake of the company into an **Employee Ownership Trust (EOT).**

*****The ninth share offering *Sequoia 2019* reserved for employees of global waste and resource management group **Veolia,** saw its overall subscription rate reach 42,000 – almost one third of the eligible 140,000 employees in 30 countries. Employees have invested more than €25m in the plan, which does not yet include the sum being raised by Veolia's Share Incentive Plan (SIP) offer to UK employees. The resulting capital increase generated by the issue of almost 1.5m new shares is equivalent to 0.25 percent of its share capital.

***VINCI**, the French concessions and construction company, paid €17.2m on acquiring 177,237 of its own shares to cover its pension savings and Esop plans at a price of €97.3 each.

WORLD NEWSPAD

***Australia**: Top executives at supermarket giant **Woolworths** will have their bonuses cut after the retailer admitted it had underpaid nearly 6000 of its employees as much as A$300m. Both sides of politics condemned the company as Woolworths' ceo Brad Banducci said he was "deeply sorry" for what is one of the largest ever public underpayment cases. Woolworths revealed that it had failed to pay many department managers at its supermarkets and Metro stores in line with the *General Retail Industry Award.* The underpayment was first identified by workers in February as the company implemented its newest enterprise agreement, with inconsistencies identified in workers' overtime levels under the award. Underpayments could track back as far as 2010, and the company estimates the total cost of remedial action to be up to $300m. About 19,000 salaried workers are employed by Woolworths and the company said former workers may have been underpaid. Mr Banducci said he "fully expected" the underpayments to cut into his and Woolworths executive team's bonuses for the coming financial year. Last financial year, Mr Banducci earned $4m in bonuses on top of his $2.66m salary: Fair Work Ombudsman Sandra Parker said the watchdog would hold the company to account for breaching workplace laws. "Lately, we are seeing a disturbing number of large corporates publicly admitting that they have underpaid their staff. Some of these matters go back many years and several comprise millions of dollars owed to workers. This is simply not good enough," Ms Parker said. She will take the issue of wage compliance up with company boards around the country.

***US**: **Boeing bonuses: going, going, gone**

In front of a US Congressional committee investigating the 737 Max crashes, **Boeing** ceo Dennis Muilenburg was asked by Rep. Steve Cohen (D) Tennessee: "*Are you giving up any money*?" Muilenburg received **$23m** in 2018, according to Boeing's proxy statement — the year the first ***737 Max*** jetliner crashed — on top of the $49m he earned during the previous two years. Mr Cohen wanted to know whether the executive planned to return his bonuses. The ceo said that it wasn't up to him, but rather it was Boeing's board which had to decide, reported *CBS News*. However, the pressure on Boeing to make a gesture proved unstoppable and Muilenburg later called *CNBC*, "suggesting that he not take any compensation for 2019 in the form of bonuses, which is most of his compensation." Surrender came on two fronts: "one, no short or long-term bonus and no consideration for equity grants until the *Max* is back in the air and flying safely," Boeing's chairman, David Calhoun clarified. Muilenburg was accused of allowing the company to build *flying coffins* and engaging in a "pattern of deliberate concealment". He said finally that he would give up "tens of millions of dollars ultimately" in bonus payments in connection with the 737 Max problems. ***He added that Boeing's board was considering including the safety performance of its planes in what determines future executive bonuses and in the situations when the company could conceivably claw back past executive pay.***

Boeing's corporate governance principles and pay policy make clear that not even the company's board has the ability to take back the ceo's $23m payout. Boeing's executive compensation policies limit how much pay it can recover later if, as Muilenburg stated in his testimony, "***We know we made mistakes and got some things wrong.***" The same is true for Kevin McAllister, the recently departed head of Boeing's commercial division that produced the 737 Max. McAllister was paid more than $57m during his almost three years at the company, or roughly $1.6m a month. Yet Boeing can't force him to pay back any of the millions he received from the company. Boeing refused to answer questions about its pay practices or about Muilenburg or McAllister's compensation packages. Shortly after reporting its earnings, Boeing told employees in an internal message that the company would not pay *any* bonuses to any staff for 2019.

Clawbacks — or the lack of them at the country's biggest banks — became a key issue in the wake of the 2008 financial crisis. The Dodd-Frank financial reform law passed in 2010 instructed the **Securities and Exchange Commission** to write rules requiring companies to enact more aggressive clawback provisions that reached beyond instances of accounting fraud by a limited number of top executives. However, those rules were never implemented.

Boeing *does* have a clawback policy, but its language doesn't cover a disaster like the **two 737 Max crashes that killed 346 passengers and crew**, grounded the jetliners worldwide, damaged Boeing's reputation and earnings, and **erased $57bn** in stock market value since the first crash in October 2018. Boeing's policy says the company will claw back incentive pay *when the company has to restate financial results that were used to evaluate executive pay, when an executive leaves for a competitor, or when an executive has committed fraud*. Two years ago, Boeing added disparaging comments by former employees to its list of clawback-able offences, but that was it. Safety lapses aren't part of the policy. Boeing's board conducted a five-month review of the company's safety policies following the second 737 Max crash in March, and made suggestions for how Boeing could improve its safety efforts. The report was never publicly released. Executive pay policies, a Boeing spokesman told *CBS MoneyWatch*, weren't part of the safety review.

Wells Fargo is one of the rare corporate examples where a board did eventually claw back a combined **$136m** in pay from former ceo John Stumpf and former head of consumer banking Carrie Tolstedt. Wells Fargo's clawback provision allowed the company to recoup pay from *an executive whose conduct resulted in reputational damage to the bank*, something that Boeing's does not do. More companies, particularly ones hit by corporate scandals, have been adding reputational damage clauses to their clawback policies. **Equifax**, for instance, amended its clawback last year, following its massive consumer data hack, to include "misconduct or failure of oversight that results in significant financial or reputational harm" to the company, according to its most recent proxy statement.

Boeing said: "With only one quarter left in the year, the grounding since March of the 737 MAX and the associated financial effects have severely impacted the company's performance by limiting the ability to deliver planes and collect on customer contracts," Boeing told employees on its internal website: "The company does not see a path to achieving an incentive payout for 2019." Last February, Boeing employees in Washington state received an average bonus of $6,800 per employee there. The company incentive plan calculates the bonuses based on three financial metrics: revenue (25 percent), which for 2019 had a target of $110.5 bn; core earnings per share (25 percent), which had a target of $20; and free cash flow (50 percent), which had a target of $15 bn.

***JP Morgan** ceo Jamie Dimon hit out at "greedy" and "selfish" bankers who have overpaid themselves since the 2007-8 financial crisis – despite being paid around £193m himself since the crash. Dimon said that he believes after the crisis there were bankers *"who were greedy, selfish, did the wrong stuff, overpaid themselves, and couldn't give a damn*". In an interview on the **CBS** show *60 Minutes*, the 63-year-old, who was awarded a £24m pay packet last year, initially said he took no responsibility for the 2008 crisis, which tipped the West into its worst recession for decades. The Wall Street banker – who has run JP Morgan since 2005 and is the last boss standing at a major lender from before disaster struck – backtracked later in the interview to say he takes "some" of the blame because the mortgage crisis was a "huge error". He claimed that JP Morgan made a positive difference by buying collapsing bank Bear Stearns during the crisis. He said: "The small guy got hurt. I think we let the American people down. But also at the same time, because we were strong, we bought Bear Stearns, we saved 15,000 or 20,000 jobs." Mr Dimon called wealth inequality a "*huge problem*". He added: "*I think the wealthy have been getting wealthier too much.*" When asked whether he thought his $31m pay packet was too high, he said the number was set by the board and had nothing to do with him.

***Michigan** Democrats announced a Bill that would provide an income tax deduction equal to 50 percent of the gain from the sale or transfer of a business to one or more employees or from its conversion to an employee-owned business. A second Bill would direct the state Department of Labour and Economic Opportunity, in cooperation with the Michigan Strategic Fund, to develop a programme to assist in developing employee-owned businesses, including but not limited to worker cooperatives and Esops. It would allow the state to provide outreach, coordination with business groups and local governments, provide technical assistance and help in finding financing, said the California based **National Center for Employee Ownership**. Both bills require employee-owned businesses to have a majority of their voting rights held by employees.

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