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it's our business

newspad of the Employee Share Ownership Centre

EXCLUSIVE: Roadchef compensation tax battle goes to mediation

An independent mediator is to be appointed in an attempt to resolve the impasse between **HMRC** and the **Roadchef** EBT trustee over the tax status of the compensation pot, which c. 350+ former Esop employee participants have been trying to get their hands on for *seven and a half years* to date.

This was revealed in a confidential letter to beneficiaries from trustee Mr Christopher Winston Smith, director of Roadchef (Employee Benefits Trustees) Ltd, who accused HMRC of, seemingly, attempting to tax the EBT almost out of existence.

Mr Winston Smith is angered by years of fiercely contested and still on-going negotiations with HMRC over whether the former Roadchef motorway service station chain employees should be treated as participants in a tax-protected scheme or not.

The trustee told the estimated 3,500+ beneficiaries, who include more than 350 ex Esop participants, that they could be forgiven for suspecting that HMRC was trying to deprive them of their court awarded compensation. He told them that HMRC already had tried to charge tax on the individual compensation pots three times since the High Court ruling in their favour in January 2014 and that HMRC was considering whether to impose further tax charges.

Mr Winston Smith insisted that the Roadchef EBT had advice from a leading QC that no tax should be paid by either the Trust, or the beneficiaries. The trust's advisers, the beneficiaries and MPs from across the party spectrum want the Roadchef Esop to be declared a tax-advantaged all-employee scheme, partly on moral grounds. MPs argue that the ex-employees' ***23 year wait*** for compensation (*since the 1998 sale of Roadchef)* is a judicial disgrace and that the injustice they have suffered must end now.

Roadchef EBT1 had repeatedly asked HMRC to enter formal mediation in an attempt to resolve the dispute quickly. Until recently, HMRC had refused to do so, but months ago it had suddenly agreed to initial discussions to explore mediation. HMRC had been using one of its own employees as the mediator and it had been difficult to make any progress. HMRC had told the trust that it would mediate on some aspects of the taxation issue, but not on others.

From the chairman

Charles Dickens' dictum 'The law is an ass' was never so clearly demonstrated in the grossly unfair outcome for the long-suffering employee shareholders in Roadchef. Laughable judicial decisions, affected by the absence of adequate case law outside the Crown Dependencies, have led to a state of affairs where the employee shareholders receive only crumbs from the table.

It is certainly good news that there will be independent intermediation, as newspad exclusively reveals, but only on the basis that something is better than nothing. However calling in litigation experts, arguably necessary in the light of HMRC's earlier hard line, has proved to be far too expensive a call and there is now a need for independent investigation of how that works too.

Newspad has run a major campaign over decades and become the employee shareholders' best friend and advocate - a tribute to Fred Hackworth and the Centre which stands behind him.

Malcolm Hurlston CBE

It almost seemed as though HMRC, by default, was widening the issues between the two sides, the trustee alleged,

However, there was some good news to report: "I am pleased to be able to say that following several requests, HMRC has now agreed to the appointment of an independent mediator who is knowledgeable in both trust and tax law, to help break the impasse."

Subsequently, Mr Winston Smith wrote to HMRC suggesting the basis for mediation of all tax matters concerning the compensation payments owed to the long-suffering Roadchef employees. He said he hoped very much that HMRC would respond positively to the trustee's suggestions, adding - "If they do, mediation should take place later this year."

Newspad asked HMRC to confirm the mediation development. An HMRC spokesman told us*: "Due to taxpayer confidentiality, we cannot comment on the* *specifics of the case, but are working to bring it to a conclusion."*

Background: Former Roadchef md Patrick Gee devised a scheme to give hundreds of qualifying employees 20 percent of the company's equity. He had negotiated with HMRC to set up one of the UK's first tax free Esops, but he died before he could do so and Tim Ingram Hill took over.

Staff who had worked at Roadchef for at least three years were allocated shares in proportion to their years of service in 1986. Mr Ingram Hill later encouraged them to sell their shares back to him. In *1995* he transferred millions of unallocated shares to a new 'performance shares' trust which he had set up, giving himself the option to buy those shares. In *1998* he sold all the shares, including his own, to Japanese investors for more than £80m – at £1.31 per share, though the deal was complex and in the end his overall gain was c £28m. Had the employees' shares remained in the Esop trust they would have made tens of thousands each from the sale, but as it panned out, many received scarcely £2,000 each from Ingram Hill to cover the sale of their Esop shares.

It took more than a decade to get the Esop participants' case to court because the trust had insufficient funds to pursue it. However, after a change in the law, the trust, advised by *Capital Law,* retained a litigation funding firm to put up risk capital to fund court action against Ingram Hill. This, added to years of still accruing legal fees, has proved very expensive for the beneficiaries.

In late ***January 2014***, High Court, Mrs Justice Proudman ruled that Mr Ingram Hill had breached his fiduciary duty to Roadchef employees by transferring Esop shares from EBT1 into Roadchef's executive performance trust, which he controlled, but there was no suggestion that he had acted illegally. Her ruling revealed that the Esop trust was claiming £29.6m in compensation, plus compound interest, whereas Ingram Hill's lawyers claimed that the true maximum claim that could be brought against their client was £13.5m because many of the shares he sold were his own.

The judge voided that transaction and ordered Ingram Hill to pay compensation to the beneficiaries, which he did after an out-of-court confidential settlement, but the amount he agreed to pay has never been published.

Because the definition of '*beneficiary*' in the main Esop trust document was loosely worded, Mrs Justice Proudman, in her ruling, focussed on the compensation rights of Roadchef EBT (encompassing the employees as a whole), rather than exclusively those of the former Esop participants, who were the only employees who actually lost money *(because they didn't receive the increase in the value of their Esop shares)*.

To his credit, Mr Ingram Hill then said he would not pay any compensation unless he had assurances that the former Esop participants would get the lion's share of the compensation pot.

Later, in the out-of-court settlement, the parties agreed that former Esop participants would qualify collectively for 61 percent of the net compensation pot, while contemporary Roadchef employee Esop 'refusniks' and ineligibles would get nine percent of the pot. The remaining 30 percent would go to more recent Roadchef employees, even though they had no connection whatsoever with the Esop.

Mr Winston Smith then told HMRC that because the judge had voided the shares transfer, the so-called '*tax*' payment Mr Ingram Hill had made to HMRC in respect of his capital gain from selling Roadchef to Japanese investors was in law no tax payment at all. The trustee convinced HMRC that it was obliged to return the *faux* tax payment to the beneficiaries, which, ultimately, it did so. Although the size of that payment has never been disclosed, it is believed to have exceeded ***£5m.***

HMRC refuses to accept that the Esop trust was tax-advantaged. The trustee claims that HMRC's counter-proposals would leave beneficiaries with next to nothing when, according to some estimates, the net total compensation, which *should* have been distributed, was c. £10m. Christine Slack 69 worked for 16 years as a cook in Roadchef Sandbach services station and got a one-off payment of only £2,300 after her shares were sold, reported the *Sunday Times.*

Esop beneficiaries had written to the trustee, asking that they should be allowed to settle any tax payments themselves from their compensation, admitted Mr Winston Smith. However, this was impossible because the High Court would not give Roadchef EBTL permission to distribute the money until all taxation issues for both the trust and the beneficiaries had been resolved fully, he informed them.

The ranks of the Roadchef Esop beneficiaries are thinning out as the years roll on and dozens have died, never having received a single penny of the compensation that was due to them.

Employees ignored in takeover, says Tory Peer

Lord Vinson, a social market economy champion, criticised the planned takeover of **Morrisons** supermarket group by one of two US-based private equity consortiums - **Fortress Investments** or **Clayton, Dubilier & Rice (CD & R),** who were slogging it out in a bidding war as this issue went to Press**.** At the very least, Morrisons' 118,000 employees should be awarded a bonus if the takeover cannot be stopped, Tory Peer Lord Vinson told *The Telegraph.*

The future of Morrisons popular SAYE-Sharesave scheme, administered by **EQ**, appeared grim, because if the company is taken private by either of the two private equity giants, c. 20,000 participants are set to lose their employee share schemes.

Companies controlled by another, i.e. subsidiaries, are not eligible to set up tax-advantaged all-employee share schemes, unless the parent is a listed company. Tax barrister and share schemes doyen **David Pett**[x] explained: *"The stumbling block is the existing requirements, in the SIP and SAYE Codes, that (apart from shares in a listed company or an EOT-owned company) the shares used must be in a company which is not under the control of another company. The existing need for the shares used to be in an independent company was to prevent manipulation of the market values of the shares. That reason still holds good,* ***although there is a case to be made for the use of shares in a company under the control of a 'genuine' private equity house whose investment is independent of other investments and made on an arm's length basis.*** *The difficulty lies in identifying what exactly is a private-equity type investment so as to provide a clearly-defined exception to the general rule that shares used must be in an independent company."*

The current legal restrictions are a huge stumbling block for any private equity acquirers who want to install an employee share plan in a UK based company which it has recently taken over. Private equity takeovers of UK listed companies often spell death for their all-employee share schemes for this reason, the August **Esop Sofa** ***newspad review*** webinar was told by senior practitioners **Sonia Gilbert** of **Clifford Chance** and **Arron Simpson** of **Deloitte.** Were private equity acquirers minded to launch ***non*** *tax-advantaged* Eso schemes, employees would see little point in participating in them, unless they were given *free shares*, because the potential reward would be drastically reduced after taxation. Sonia said that despite years of complaints and lobbying on the issue, Treasury ministers had not accepted that the tax rules must be changed to allow private equity acquirers to set up all-employee schemes in acquired UK companies in which, hitherto, employee share ownership had flourished:

"*Why are we not there yet? – What a shame that private equity acquirers are still being told – you cannot have tax qualification for employee share schemes. A real opportunity is being lost,*" she said.

Morrisons recommended to its shareholders a raised £7bn takeover bid by the US private equity group CD & R in the latest round of the battle for control of the UK's fourth largest supermarket chain. The Bradford-based grocer confirmed it had accepted an improved offer of *285p per share* from the private equity firm that trumped the offer on the table from rival private equity suitor Fortress. CD&R's new offer was at a 60 percent premium to the Morrisons share price on June 18, the day before news of bid interest in the company first made public. Morrisons chairman, Andrew Higginson, said the CD&R offer represented "*good value for shareholders while at the same time protecting the fundamental character of Morrisons for all stakeholders. CD&R have a strong record of developing, strengthening and growing the businesses they invest in."*

Both bids attracted criticism from the trustees of Morrisons' £5.5bn pension fund, who said that a debt-fuelled takeover would weaken its ability to protect the pensions of 85,000 present and former employees. They claimed that a private equity buy-out would undermine the covenant protecting the retirement pots of Morrison employees and called for additional support from the bidders, reported *The Telegraph*. "*We hope agreement can be reached asap on a security package that protects members' benefits,*" said Steve Southern, chairman of the pension trustees.

The Morrisons board withdrew its previous backing of the Fortress offer, with shareholders expected to be asked to vote on the improved CD&R offer next month.

Former Tesco ceo, Sir Terry Leahy, is one of the latter's senior advisers.

Were Fortress to win the bidding war, Sharesave participants would be offered an extra three months *assumed profits* in cash, which they would have received had their Sharesave contracts been allowed to run to term, promised its offer document.

Multi-millionaire and philanthropist Lord Vinson gave 1,000 employees ten percent of the equity when he floated his Plastic Coatings business on the stock exchange. He claimed the Morrisons bid had been launched by "*US vulture funds*" and demanded it be referred to a beefed up Competition & Markets Authority (CMA), because the City was unlikely to object, as it was due to collect an "*outrageous*" £300m in fees once the deal had gone through. The only purpose of the takeover was to strip Morrisons of its assets, enabling those behind it to walk away with a billion pounds in their pockets, he warned. Lord Vinson, co-founder of the Tory *Centre for Policy Studies*, defended Morrisons' employees, asking how they felt about having the business sold over their heads: "*Shouldn't the management, now with its nose in the trough, at least have considered giving the staff a bonus?*" he demanded. "*This would have rewarded them for their part in creating a successful and well-regarded business. It might also serve to compensate employees for rougher waters ahead and help create a better relationship ahead with the new owners. When I floated my own company, I gave ten percent of the equity to the workforce."*

He added: "*The circumstances of the Morrisons deal will no doubt strengthen the hand of capitalism's many critics. Even if it will not act now, the government should at least learn the lessons of unbridled inward investment. It should refer takeovers above a certain size to a beefed up Competition & Markets Authority. Allowing billionaire asset strippers to walk away with another billion, leaving this country poorer, while contributing nothing in return, should be a thing of the past.*"

Morrisons, which has almost 500 stores, is giving staff a Boxing Day holiday this year, though there is no sign of a bonus. Its board received an earlier takeover bid worth £6.7bn, from the consortium led by Fortress Investment Group (*an independent subsidiary of Softbank)*, though the real value was £9.9bn, as the consortium agreed to take over Morrisons' £3.2bn debts too, if its offer were accepted. The Canada Pension Plan Investment Co, Koch Industries (US real estate) and a Singaporean sovereign wealth fund are the other members of the Fortress consortium. The Takeover Panel had given CD & R more time to decide whether to up its earlier bid, which Morrisons had rejected.

Private equity funds put up only a slice of winning bids with their own cash. Their acquisitions are highly leveraged, with, typically, up to 70-80 percent of the bid financed by loans (debt), secured on the assets, which include the shares. This is another reason, to add to lost tax advantages and the implied reduced control via dilution, why private equity houses usually fail to replace all-employee share schemes in the UK companies which they acquire by takeover.

Morrisons' ceo, David Potts, stands to make £20m if the supermarket's board decides to honour share awards granted to executives under long-term incentive plans. Potts is guaranteed a £9.2m payout from the deal on the shares he already owns. Two other Morrisons directors were set to share up to a further £15m if the deal went through. Fortress made commitments not to sell off Morrisons' freehold properties and vowed to protect employees' jobs and pay. [x]*David Pett can be reached at Temple Tax Chambers, Tel 020 7353 7884; Direct 01647 24618; Mobile 07836 657 658.*

Sainsbury's** could be the next UK supermarket giant to come under attack by US private equity funds, revealed *The Sunday Times,* which –if true – would put yet more all-employee share schemes at risk, as Sainsbury's operates both Sharesave and a share purchase plan, which is its version of Partnership Shares in the SIP. There are ***31,000 employee participants in Sainsbury's Sharesave plan alone! Still smarting from having been rejected in the earlier Asda takeover battle, the New York based **Apollo** fund was reportedly sniffing around both Morrisons and running the slide rule over Sainsbury's too, the newspaper claimed. Czech investor Daniel Kretinsky owns almost ten percent of Sainsbury's through his Vesa Equity Investments fund, while the Qatari state sovereign wealth fund owns a further 15 percent.

*More all-employee share schemes – at **Vectura**, a Cotswolds based respiratory drugs producer, which employs more than 500 people – were at risk as Marlboro cigarette maker **Philip Morris International (PMI)** made a £1bn bid to acquire Vectura, while the other bidder, US private equity giant **Carlyle**, put in a raised bid worth £958m, but refused to go any further, leaving shareholders to decide which bid they preferred. While Philip Morris *does* operate deferred profit-sharing plans for its employees, Carlyle is not a known supporter of all-employee share plans.

Vectura operates both all-employee tax-advantaged schemes - Sharesave and the Share Incentive Plan (SIP) - for its employees. In addition, it operates performance share schemes for its executives. PMI closed in on its prey by buying almost *30 percent* of the respiratory drug company's shares in the market. Vectura directors had already recommended shareholders to accept PMI's £1bn bid. Its offer of £1.65 per share beat the rival bid from US private equity group Carlyle, whose final offer was £1.55 per share. Vectura makes inhaled medicines and devices to treat respiratory illnesses such as asthma. Dozens of health groups urged Vectura to reject the firm's offer. They warned that a PMI deal would significantly harm the future prospects of the healthcare company as, allegedly, it would deter top lung researchers and scientists unwilling to work for a tobacco company. PMI ceo Jacek Olczak lashed out at bid critics, accusing them of being uninterested in progress and of trying to prevent the company from moving its focus away from cigarette production. PMI needs more than 50 percent of Vectura shareholders to accept its latest bid by September 15.

*Business Secretary Kwasi Kwarteng instructed the CMA to prepare a report on the £2.6bn recommended takeover bid for key UK defence company **Ultra Electronics (UE).** Its board had accepted an increased bid, worth £35 per share in cash by defence rival, **Cobham**, now owned by the US buy-out firm **Advent International**. Greenford, Middlesex, based Ultra Electronics employs 4,500 worldwide and operates several popular Eso schemes, including both SAYE-Sharesave and the SIP. In its SIP, employee share dividends are automatically reinvested into the purchase of more SIP UE shares, which are held in trust for a minimum three years. *The future of these all-employee share schemes too looked very uncertain.*

Mr Kwarteng said that foreign investment must not threaten national security, but added that the UK was "*open for business*." He tabled an Order in

Parliament preventing Ultra from "*disclosing sensitive information to Cobham*" about the goods or services it provides to the government or armed forces. However, it would be a surprise if this deal were not approved, said the BBC's business editor, Simon Jack.

"*Even before you count Morrisons, Meggit and Ultra - foreign, private buyers have spent more buying UK listed companies in the last eight months than they have in the last five years combined*," wrote Mr Jack.

After potential acquirer Cobham was itself bought by Advent for £4bn two years ago,

substantial chunks of Cobham's assets were sold on, reducing its workforce by 4,000, despite Advent's promises to invest and protect jobs. Advent has gradually loaded up Cobham with £2.2bn of debt which it didn't have before it was taken over.

Ultra's directors said their acceptance of the raised bid was subject to "*legally binding and enforceable commitments to HM Government*," including security issues and protecting UK jobs. Ultra supplies the Royal Navy with sonar systems for anti -submarine warfare and anti-torpedo decoys. In addition, it produces cyber warfare equipment. Other UK defence firms which have recently ended up in the hands of US buy-out and private equity funds include **GKN** and **Inmarsat**.

Asda**'s popular SAYE-Sharesave scheme, which regularly attracted up to ***25,000 employee participants, has been dismantled in the wake of the supermarket group's takeover by the Lancashire based ***Issa*** brothers, Zuber and Mohsin, backed by the private equity house **TDR.** Asda ceo and president Roger Burnley exited the business in a surprise move, at least six months earlier than he was due to leave.

*Stung by growing criticism about the UK's '*open all hours'* attitude towards private equity inward investment, the government put up investment minister of state Lord Grimstone to tell BBC Radio 4 *Today* listeners that many companies perform better with overseas ownership. The UK had nothing to fear from the recent flood of private foreign takeover bids for UK-listed companies, he claimed. "*It would be a sad day for Britain if we pulled down the shutters so that we weren't a mercantile entrepreneurial country."* The UK will hold an international investment summit, in mid-October, sponsored by Barclays among others, to attract even more overseas investment in post-Brexit UK. "*All our research shows that overseas invested companies are more productive and produce more jobs. It's an extraordinary finding but what it shows is the importance of attracting overseas investment into the UK*," added Lord Grimstone, former deputy chairman of Barclays. "*We intend to keep the UK as one of the most attractive global destinations for foreign investment. We are in that category but I like to think of investment as one of the most globally competitive sports and we intend to win in it."* He said nothing, however, about the impact of private equity acquisitions on all-employee share schemes.

OCORIAN

Despite the flood of recent private takeovers, overall foreign direct investment into the UK has fallen every year since the Brexit referendum and the UK, which attracted more investment than any other country in Europe for 18 years in a row, has lost that title to France in both the last two years.

*Private equity firms and other buyers flocking to Britain to acquire companies on the cheap have sent bids for UK businesses to their highest level since 2007, reported *The Times.* The volume by combined value of takeover attempts involving UK targets reached almost ***£156bn***, so far this year, the highest year-to-date total for 14 years, according to *Refinitiv*, the financial information provider. Companies including St Modwen, the property group and Signature Aviation, a private jet services business, have attracted bids since the beginning of the year, in addition to the besieged UK supermarket sector.

Centre members' views: KKR's** private equity arm is one of the few which installs and encourages broad employee share ownership plans in the companies which it acquires, both in the US and UK. However, most private equity groups ditch employee share plans on sight, for the reasons discussed above. So how can all-employee share schemes be protected from private equity consortiums who eliminate them once they take over UK target companies. Should the Centre lobby ministers on this issue? What should our line of attack be? Please e-mail your comments to ***newspad, c/o fred_hackworth@zyen.com

EVENTS

Esop Centre webinar – Sept 14

Share plans for non-employees and the gig economy. Employee share ownership has the greatest impact on company productivity and performance when participation rates are high, but a major challenge currently facing employee share plans is the changing nature of the labour market. The rise of the gig economy, outsourcing and the demise of a "job for life" have served to diminish access to share plans for a significant proportion of the workforce. Gig economy workers: freelancers; independent contractors; consultants etc, are treated as self-employed rather than employees of a company.

On Tuesday September 14 2021 at 15:00 (BST), share schemes expert David Craddock will explore the considerations that apply to the involvement in company share schemes of individuals who are not employees or executive directors of the company. Registration is now open.

Save the day: share schemes & trustees—Dec 1

The Esop Centre is teaming up with STEP Jersey for its annual employee share schemes and trustees conference. The format of this year's event will be a 90 minute **live on-line** panel discussion with breakout group debates on the morning of December 1 2021. Speakers will pre-record presentations as background material for participants.

The programme, which has been drafted to provide relevant technical information, which we trust will be acceptable as counting towards your Continuing Professional Development or Continuing Competence, will include talks on: Recent changes in UK tax laws, court and tribunal decisions and the Finance Bill 2022; the rise of Employee Ownership Trusts; as well as legal; tax; regulation; and employee share plans updates.

Presentations will be from share schemes experts including: David Pett, barrister, Temple Tax Chambers; Elaine Graham, director, Zedra Guernsey; and David Craddock, founder and director, David Craddock Consultancy Services. Further details to be announced.

Report: Esop Sofa *newspad review* webinar

Lots of new companies in the UK market via IPOs were celebrating their arrival by issuing free shares to all their employees, **Arran Simpson**, global employment services partner at Deloitte, told the latest **Esop Sofa *newspad review*** webinar. Many of these newcomers were keen to launch employee share schemes, which was an encouraging development to put against the recent HMRC statistics showing a disappointing three percent overall decline in SAYE-Sharesave and SIP usage, he said. **Sonia**, a partner at Clifford Chance, said that awarding free shares during the pandemic was a "very good idea," because, as lots of employees were working remotely, more corporate glue type measures – such as free share awards – were needed. **Julie Shepherd**, director of share plans at **The Sage Group,** said that her company had not allowed the pandemic to change its Sharesave scheme: "We were quite lucky. We went to the board and asked what would be the right thing to do. We have no plans to make any Covid-related redundancies and our share price has recovered," she said.

Returning to the share scheme sector's private equity woes, the panellists pointed out that at least employee share plan participants usually obtained sizeable windfall payments from the transaction, which was positive, but the question was – what happens next? Arran said that there were inconsistencies in the current situation because if the acquirer was in trade *and listed,* it could operate the Share Incentive Plan (SIP), even if the acquired company was under the control of another. Some acquired company clients had managed to operate innovative forms of all-employee share plans, though without features such as annual invitations. However, sometimes the client decided to do nothing and the share plans were lost.

Sonia said that although **ESG (environment, society and governance)** was now the flavour of the month, two years ago it had been a *tick box* exercise for most companies and had hardly been talked about. Now companies were making big changes to their variable pay policies, by making "quite a chunk of it" (30 to 40 percent) dependent upon to what extent executives had met the targets fixed by the new metrics. Multinationals and global service providers were talking to their subsidiaries and overseas offices about how to install effective ESG policies. "There has been a real sea-change on ESG issues," she added.

Julie, who manages all Sage's equity plans including a global employee share plan in 17 countries, said that the impact of ESG was growing considerably, as more and more employees globally had access to life-changing data. Sage had made a bold pledge to become carbon neutral by 2040 and supported all three pillars of ESG. For example, the company and staff could donate to one of three related charities, like digital inequality, she said.

The panel mentioned briefly the fact that the Centre was awaiting the Treasury's response to the EMI reform paper which the Centre had submitted in response to a consultation invitation. Arran said that Deloitte had seen a lot of 'bad' Enterprise Management Incentive (EMI) schemes, usually in SMEs which had not researched the quality of various providers thoroughly and mistakes had been made.

The webinar was chaired by **Darren Smith**, UK business development director at **Global Shares**, who asked panellists to talk about the future of the share scheme sector, as they saw it. Sonia said that while companies invested a lot of time and money in their share plans, some did not make sure that their employees were sufficiently aware of them.

The plans were only valuable if employees got something out of them. So the question was – were companies really getting the best out of their share plans? Communications were a vital factor in this equation and some companies had to smarten up their act to better get this message across, she said. Julie urged government to take a detailed look at all -employee share schemes to make them more relevant to today's market. For example, the minimum five-year holding period for shares in the Share Incentive Plan, in order to gain the full tax advantages, was 'way out of line' with the loyalty habits of today's workforce. "People move around so much more than they used to, so this five-year rule should be changed now," she added. Former YBS Share Plans manager Darren predicted more and more globalisation of companies and with that more advanced technology in the management of employee share plans. He said how sad he was that YBS Share Plans had been forced to withdraw from the share plans market because it could not keep up with the furious pace of technological demands. Staff remained in place to wind down existing plans until maturity, he added. The panel agreed that the YBS withdrawal had reduced market competition, which was not a good development.

MOVERS & SHAKERS

*Centre member **Sanne** accepted a £1.5bn takeover bid from fund servicing group **Apex**, which crystallised a 920p per share offer for the Jersey-based FTSE 250 fund administrator. Sanne provides EBT trustee and other outsourcing services to almost 2,000 clients, varying in type from private debt to capital markets and real estate. It recorded a 12 percent rise in earnings last year as it won new businesses and made several acquisitions. Founded in Bermuda in 2003, Apex has $1trn of combined assets in the administration, custody, depositary sectors and under management. It has 45 offices worldwide and more than 4,000 employees. Apex offers a range of services to asset managers, capital markets, corporates and family offices, including funding, digital on-boarding and bank accounts, depositary, custody, super manco services, HR and payroll and an ESG Ratings and Advisory service for private markets. Sanne had already rejected a £1.4bn bid from **Cinven**, a private equity giant. Apex's proposal implied a premium of almost ten percent to Sanne's recent closing price.

*Employee shareholders at UK defence and aerospace technology firm **Meggitt** will suffer disruption, whoever wins the takeover battle between two US aerospace companies, **Parker-Hannifin (PH)** and rival **TransDigm.** The latter submitted a 900p-a-share *outline* takeover bid, which trumped the 800p-a-share offer from PH, worth £6.3bn. For whoever wins, both Meggitt's Sharesave and SIP schemes are lined up for closure. Coventry-based Meggitt, a FTSE 250 company, which makes wheels and brakes for military fighter jets, employs more than 9,000 people worldwide, including 3,000 within the UK at various manufacturing facilities and regional offices.

More than 4.2m Meggitt share rights are held in its Sharesave, while an additional one million shares are held in its SIP. A bonanza cash-out awaits those in senior management at Meggitt, as 11.5m share rights are held in its LTIP - 8.65m in conditional awards and a further 2.95m in options. Parker-Hannifin will close both schemes if it wins the bidding war, but said that "*wherever possible*" Meggitt employees would be able to participate in Parker's global employee stock purchase plan. A further 1.8m Meggitt shares held by its employee share ownership plan trust are earmarked for satisfying outstanding awards.

PH said it was "*committed to being a responsible steward*" of Meggitt, but admitted that any legally binding commitments to maintain Meggitt's UK HQ, plus existing divisions, R & D, product engineering and manufacturing staff levels would only apply for ***one year,*** except for R & D commitments, which would last for five years. Parker is a global leader in motion and control technologies, including precision engineered solutions for aerospace, climate control and electro-mechanical production.

Meggitt's board gave its shareholders notice of a vote on the recommended Park Hannifin deal on September 17**.** The UK Takeover Panel gave TransDigm a deadline of September 14 to make a formal offer for Meggitt. Chairman, Sir Nigel Rudd, called on ministers to block a takeover if any bidder tried to buy it without giving binding commitments on investment and jobs.

Documents seen by *The Guardian* imply that city bankers, lawyers and PR advisers expect to net more than £200m in total for their services in the takeover of Meggitt.

Ceo Antony Wood and fd Louisa Burdett are entitled to retention payments and *transition awards* in cash and stock, as well as payment for shares they sell to Parker. In total, the duo could scoop a combined £9m. Sir Nigel, who was involved in the sale of Boots and Signature Aviation to overseas buyers, will make £2m if he sells his shares in the company.

*Former **Royal Mail** and **ITV** boss Adam Crozier joins the board of **BT** from November, before succeeding Jan Du Plessis as chairman from December. Mr Crozier will work with BT ceo Philip Jansen in the full broadband installation process throughout the UK.

***Facebook** launched an app called *Horizons Workrooms*, which allows users to create a 3D avatar and to inhabit a digital office space, as in a board meeting, seen through a virtual reality headset.

*Centre member **Ocorian** announced the acquisition of Guernsey based **Trust Corporation International (TCI)**, subject to regulatory approval. TCI is a leading Guernsey based fiduciary, specialising in proactive planning, wealth administration and corporate services. TCI's 50+ strong team specialises in administering complex, high value structures. "*This acquisition expands our ability to provide a comprehensive service offering to private clients and international corporates in Guernsey alongside our existing strength in fund administration*," said Ocorian chairman & ceo, Frederik van Tuyll. Meanwhile, TCI ceo Michael Betley and its directors and staff are joining Ocorian.

*Colourful **Sports Direct** owner **Mike Ashley**, who believes in employee share ownership for only some of his retail store staff, announced that he would be handing over the reins to his future son-in-law, Michael Murray, while remaining as a board director. Mr Ashley's Frasers Group last year unveiled a new performance based incentive scheme placing staff in line for a share of a £100m payout. For employees to cash in, Frasers Group's share price must rise to at least £10 – almost double its recent closing price of £5.90 – consistently over the next four years.

UK CORNER

Revolut creates 76 employee shareholder millionaires

Employees are among internet bank **Revolut**'s big winners, as well as investors and founders who are becoming rich – at least on paper - from the fintech's meteoric rise. At least 76 past and current employees own shares in Revolut worth seven-figures, according to a *Sifted* analysis of Companies House records. Among them, more than a dozen hold $10m+ worth of shares. This follows Revolut being valued at ***$33bn***, making the London-based start-up into the UK's most highly valued private company. Recent capital raising increased Revolut's valuation sixfold within 18 months, not only making co-founders Nikolay Storonsky and Vladyslav Yatsenko into billionaires, but minting more than 50 new employee-millionaires, despite the bank still being loss-making. However, Revolut has let employees start cashing in small chunks of their shareholdings in various secondary sales and ongoing listings on *Seedrs.* The latest share sale was announced in July, when staff were offered the chance to sell up to 20 percent of their vested holdings (for those who joined at least 18 months ago), at a slightly discounted price of $610 per share. Revolut alumni have been invited to take part but will need to wait another month, pending further investor interest, FT backed *Sifted* heard.

Revolut employees have gone on to start their own businesses, including Pablo Viguera, who now runs Belvo. Ex-Revolut employees have started financing new start-ups, having founded their own angel investment syndicate, Expansion Capital, which is investing between £50,000 and £100,000 in a range of early-stage tech start-ups. According to Revolut's last annual report, there are now 2.4m vested staff options, worth around $1.54bn at the last count. The options pool was given a further boost last year when Revolut offered an equity-salary swap scheme to its 2000+ employees amid the pandemic. Its employee share scheme has become tougher in recent years, which could slow the pace of creating staff millionaires. Last February, Revolut rolled out a *growth shares* scheme for European staff. Growth shares vest immediately but often come with a pricey "hurdle rate" — the price at which the shares can be exercised. Prior to the most recent round, that hurdle was set at £91 (when Revolut's shares were worth around £73). Fortunately, the $33bn valuation tag means Revolut's shares are well clear, giving existing staff a lucrative and tax-efficient shareholding. Revolut said that the new scheme was "*hugely beneficial for employees in avoiding incurring heavy tax penalties."*

Top pay troughing in state sector

*Eight senior civil servants working for **Test & Trace (T & T)** are earning more than PM Boris Johnson, with four of them earning more than £200,000 per year, even though it repeatedly failed to attain key targets. The Commons Public Accounts Committee accused T & T of treating UK taxpayers like a '*cash machine*.' Eight out of the ten highest paid Department of Health civil servants in the first quarter of this year were working for Test & Trace, reported *The Telegraph.*

***Treasury** officials have been awarded pay rises of up to 30 percent and bonuses of up to £15,000 during the pandemic. Treasury accounts show that six of the top nine officials who were in post during the last two years received pay rises last year while five received bonuses, reported *The Telegraph.* The chancellor's chief economist Clare Lombardelli got a £30,000 salary rise, while two other senior officials, Sir Tom Scholar and Charles Roxburgh received bonuses of between £15,000 and £20,000 on top of their salaries, as did the Treasury's head of tax and welfare Beth Russell. Tory MPs said that the increases for the Treasury mandarins were *completely unacceptable* at a time when most public sector salaries had been frozen for at least a year.

*The **House of Commons** handed out bumper 'golden goodbyes' to Bercow-era staff - with the departing dg among those given £90,000. Ian Ailles was leaving his £175,000 a year job, after serving less than six years. Director of Security Eric Hepburn received a 'voluntary exit' package of £85,000 to £90,000 when he left his £115,000-a-year post in December. Mr Hepburn's pension pot is worth £1.2m, according to the latest Commons accounts. Edge Watchorn, who was director of '*participation*' stepped down in April. She received a payment of more than £85,000. David Hemming too, who was the estates manager until September 2019, was given between £85,000 and £90,000 when he left his £110,000 job in an *'organisational re-structure'*. The departures coincided with the end of Mr Bercow's decade-long tenure in October 2019. Speaker Lindsay Hoyle has been trying to get a grip on the multi-billion pound restoration and renewal project at parliament amid fears that costs were spiralling out of control. A Commons spokesman said: *"Our exit payments are generally informed by the rules set out under the Civil Service Compensation Scheme, where relevant,"* the spokesman said*. "Each payment is subject to an individual business case to ensure value for money. The size of payments is determined by factors including age, salary, length of service and pension scheme membership.*"

***BBC's** *News At Ten* presenter Huw Edwards used an interview with the BBC's Welsh language radio station to criticise his employer for the way in which it had publicised his then salary of £550,000+ in 2017, before he agreed to take a "huge" pay cut in order to help fund the levelling up of senior female co-employees' salaries. His salary is now around £430,000 pa, while *Newnight* presenter Emily Maitlis earns around £330,000.

***Bankers' bonuses**: The government is considering removing restrictions on bankers' bonuses as part of its plan to ditch EU rules and to make the City more competitive, reported *The Times*. Such a move has support within the Treasury as a way to boost the capital's prospects for retaining its key role in financial services.

Pockets before wicket

Senior executives at the England and Wales Cricket Board (ECB) were on a sticky wicket after it emerged that they were poised to share a projected £2.1m long-term incentive plan (LTIP) bonus pot, despite making 62 job cuts last year in response to the pandemic. MPs, including former sports minister Labour MP Clive Efford demanded that the government dock the ECB the same amount in funding as the scheduled pay-out. Mr Efford called the awards *"outrageous*" and "*sheer naked greed*." He added: "*Everyone else has had to tighten their belts due to the pandemic and I don't see why ECB executives should be any different*." He was backed by Tory MP Steve Brine who said that if the ECB was not prepared to re-think the planned bonuses, then the government should consider slashing the Board's taxpayer grant.

ECB accounts show that the five-year LTIP is due to be settled in cash in 2022, with *The Guardian*

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claiming that both Tony Harrison, the board's ceo who was paid £512,000 last year despite a voluntary pay cut, and Sanjay Patel, md of the Hundred, were among intended recipients. The ECB refused to say which executives would share the final dividend, citing confidentiality in employee contracts. One senior county official claimed that "six or seven" individuals could benefit from the scheme set up in 2017, initially forecast to be worth more than £3m. The governing body stressed that the LTIP was not linked directly to the success or otherwise of the launch of the new Hundred's tournament. The board said it was designed as a "*retention tool for key senior leaders*" to "*reward and encourage the long-term performance and growth of the organisation/game*" in line with its *Inspiring Generations* strategy. The attainment level will be determined by the ECB's board and remuneration committee. The remuneration committee, headed by ECB chair, Ian Watmore, opted to proceed with the LTIP last November two months after it was announced that 20 percent of the governing body's workforce was being cut. The ECB registered a £16.5m loss in 2020-21, with reserves which were as high as £73m in 2016 dropping to £2m, while cricket as a whole lost £100m in revenue.

UK ceos earn 86 times employee wages
Ceos of the UK's biggest companies earned 86 times the average full-time wage last year. The median total reward of a FTSE-100 ceo was £2.69m in 2020, according to the left-leaning *High Pay Centre (HPC),* though that number was down 17 percent from £3.25m in 2019, before the pandemic hit. "These are still very generous rewards," said HPC director Luke Hildyard. The think tank's research revealed average ceo bonus size fell from £1.1m in 2019 to £828,000 last year. Meanwhile the average long term incentive plan payment fell from £2.4m to £1.38m. "Ceo pay packages are designed to reflect the experience of shareholders, employees and other stakeholders so in one sense the lower pay levels this year show the system working as intended," said Mr Hildyard. However, most ceos had already made millions during their careers and the still high rewards came at a time when government support for the economy probably had been more important to the survival and success of the UK's top companies than the decisions of their executives, he said. The research showed that average ceo earnings at the nine FTSE-100 companies who used the government's jobs protection furlough scheme to pay employees, was £2.39m. Hildyard said the UK's high ceo reward reflected a wider gap between rich and poor in the UK than in most other European countries. Pascal Soriot of **AstraZeneca** was the highest-earning ceo, making £15.45m last year. Next came Brian Cassin of credit reference agency **Experian** who made £10.3m, according to the HPC. In third spot was Albert Manifold of building materials company **CRH,** who received £9.92m. Laxman Narasimhan of consumer goods firm **Reckitt Benckiser** was fourth with £9.24m, while the fifth highest-paid FTSE boss in 2020 was Rob Perrins of house-builder **Berkeley**, who received £8.03m.

WHITE & CASE

COMPANIES
Cardiff based insurer **Admiral** is to hand back £469m to shareholders after a jump in profits and a deal to sell the Confused.com price comparison business. Employee share ownership fan Admiral said that it would return cash through a bumper dividend totalling 161p a share, a record payout by the company. The dividend was boosted by two special payments that the FTSE 100 group plans to distribute to investors. One is linked to the Confused.com sale that was announced last December and the other special payout reflects Admiral's strong performance in the first half of the year.
***AUS,** a family-run Huddersfield-based manufacturer and distributor of operational and safety-critical products for the rail sector, has become employee owned. The business, which employs 60 and is run by founder Simon Gibson, moved to employee ownership trust (EOT) status after Gibson sold 70 percent of his shares to it. Will Gibson, marketing director, said: "*We've always been committed to keep our employees connected to the company, and so the idea of becoming employee owned seemed like a natural fit for us. What we certainly didn't want, was for a third-party buyer to come onto the scene and potentially split the company up.*" The EOT will decide the level of bonus payout each year, according to how much of the initial loan for the business has been paid back. However, he said all annual payments would be split equally among staff and would not depend on employees' length of service. Simon Gibson will remain in his role as chairman.
***BP** will hand shareholders a dividend increase, and £1bn in share buybacks, after the company returned to profit after a rebound in oil prices. The oil giant predicted that the world's demand for oil will reach pre-pandemic levels by the second half of next year, and lifted the value of its oil reserves by $3bn after

revising its forecasts for oil prices higher for the rest of the decade. The company plans to use the healthier cash-flows to begin buying back $1.4bn worth of shares, and continue buybacks of $1bn every quarter. BP also increased its dividend by four percent to 5.46 cents for the second quarter, having halved it to 5.25 cents in July 2020 and plans to maintain this growth every year until 2025.

***Citi Group**, **Goldman Sachs** and **HSBC** all raised starting salaries for their junior investment bankers in the US and UK to £80,000 after several complained about '*burn out'* through excessive working hours during the pandemic and of alleged workplace 'abuse' by managers.

*__Fraser Group__ incoming ceo Michael Murray, could earn up to £100m in shares on top of his £1m annual salary in a new share option scheme, provided he achieves a share price of £15 for 30 consecutive days before 2025. Mr Murray is engaged to the daughter of Mike Ashley, who is stepping down from his ceo post.

*Bakery chain **Greggs,** which obtained almost £32m in business rates relief during the past 18 months due to the pandemic, said it would not return the subsidy, despite a recent boost to its sales and profits. Ceo Roger Whiteside said that Greggs had repaid to the Treasury at least £5m – money it had been awarded under the chancellor's jobs furlough scheme – but would not pay the sum it had saved via its reduced tax bill. Greggs returned a pre-tax profit of £55.5m in the six months ended July 3, well up on the £36.7m profit over the same period in 2019.

*Banking giant **JP Morgan Chase** gave its ceo Jamie Dimon a special incentive award, potentially worth millions of dollars, to persuade him to lead it for a "significant number of years" more. The 1.5million stock appreciation rights, which vest in five years time, will allow him to take a profit if the firm's share price rises. Mr Dimon is the only surviving major Wall Street bank chief who saw it through the 2008 financial crisis. Dimon became ceo of JP Morgan Chase at the end of 2005 and was named chairman a year later. He was paid $31.5m (£23.1m) in 2020 and, according to *Forbes,* has an estimated net worth of $1.8bn.

***John Lewis Partnership, M&S, Aldi** and **Tesco** offered lorry-drivers sign-on bonuses of up to £2,000 to attract them amidst a nationwide shortage of drivers. Some supermarkets went further by promising drivers retention bonuses, to be paid in yearly instalments to reward company loyalty.

*Lincolnshire-based manufacturer **Lebus Upholstery & Furniture** became employee owned, after its owners sold 100 percent of their shares to the 480 employees, via an EOT. The move to employee ownership maintains not only the jobs on site in Scunthorpe, but hundreds of others in the supply chain. The directors and management will remain in place to continue running the 180 year old business. Lebus said it wanted to remain within the Scunthorpe area and continue to be a major employer there and that the EOT provided the perfect compromise. "*Private equity was not something we wanted to consider and a trade sale, while attractive to shareholders, would not have guaranteed the security and continued employment of many colleagues who have made such great contributions to the success of the business in recent years,"* a spokesperson said.

*St Andrews based digital tachograph download tool developer **Lisle Design** became staff-owned after establishing an EOT. The business was set up by md Mike Lisle in 2002 and counts German companies Continental and ZF Group among its client base. It became the ninety-ninth Scottish organisation to adopt the EOT model this year.

*PR agency **Milk and Honey (M&H)** became majority employee owned after transferring 55 percent of its shares to an EOT. Slightly more than half of the agency's 27 employees are co-owners, qualifying after just 12 months in their roles. They benefit by each taking a tax-free share in the profits up to £3,600 per year and can influence strategic decisions made by the business. M&H doubled its workforce in the past year and its EOT is guided by a team council, which scrutinises and guides decision-making by parent company Hive Group. The organisation, which was founded in 2017 by former Hudson Sandler md Kirsty Leighton, was valued at £3.6m as part of the EOT process by Moore Kingston Smith, which set up the trust. Leighton said that the team had created a sustainable, purpose-driven, "great place to work" while delivering impressive growth, profitability, and outstanding client success. "*We have always shared profit with our teams; however, this new EOT structure means we can legally empower the team to be more actively involved in the direction of their business and do so in a more tax-efficient manner. Essentially: 'In our people we trust',"* she said.

*Altrincham, Cheshire-based professional services advisory business **Oakwood Corporate Services** became employee owned after forming an EOT. Founded in 2009 by Michael Harris and Muriel Thorne, the company, which has 31 employees, is a

TRAVERS SMITH

provider of secretarial, training and compliance services. It works with listed groups, private equity-backed companies, SMEs and not-for-profit organisations. *House-builder **Persimmon**'s fd, Mike Killoran, is retiring after receiving c.£80m from his 25 year employment with the company, mostly in bonuses, reported *The Telegraph.* He received a £35m bonus in 2017, and £25m the following year after the then government's *Help To Buy* financial assistance programme sparked an explosion in demand for new homes. Persimmon's share price sky-rocketed as a result. Former ceo Jeff Fairburn was initially awarded a ***£110m*** bonus, reduced to £75m after a public outcry, and was eventually forced out of the company. Mr Killoran owns an estimated £56m of Persimmon shares.

*__Smiths Group__ sold 70 percent of its medical division, which makes ventilators, to US private equity firm **TA Associates** at an enterprise value of £1.7bn, while keeping 30 percent.

*The founding shareholders and directors of Sheffield based video games group **Sumo** will share £92m when it is taken over by Chinese group **Tencent,** the world's biggest games company.

*UK distributor for computer retailers **Target Components** is to become an employee-owned business to protect its staff from potential acquisition approaches, reported *Employee Benefits*. The West Yorkshire firm will adopt an EOT model, in which 70 employees will become the majority owners. Target's existing shareholders, md Paul Cubbage and owner Ian Prescott, will each hold a ten percent minority shareholder in the new ownership structure. Cubbage will resign from day-to-day operations, move to a non-executive director role and start searching for new leaders. Target Components will use the EOT to protect employees from the potential impact of an acquisition approach and hopefully see stakeholders benefit and earn more. Annual profit sharing, which is ten percent of its pre-tax profit, will be tax exempt in the future under EOT rules. "*It's [for] the job security of our people who helped us come here, the culture and spirit of our business, and the potential impact of acquiring our relationships with our customers and partners,"* said Cubbage.

*Hundreds, if not thousands, of UK consultancy jobs were saved as Aon agreed to pay **Willis Towers Watson** a $1bn termination fee for abandoning the planned $30bn merger between the two financial consultancy giants. Aon said that the two sides had reached an "impasse" with the US Department of Justice over the planned deal. The DoJ said it had blocked it for competition reasons. US Attorney General Merrick Garland said that US stakeholders relied on competition between the two giants to lower fees for health and retirement benefits planning.

ZEDRA

Dividend pay-outs soar

UK-listed companies announced a combined £7.2bn in dividends and share buybacks, as the economy rebounded and receding Covid fears allowed firms to resume bumper payouts to investors, reported *The Guardian.* Big oil and miners dominated the post Q2 dividend bonanza, with mining firm Anglo-American revealing the largest payout, worth a total of $4.1bn, after reporting its strongest half-year profit in the company's 104-year history. It followed similar moves by Shell, drinks company Diageo and Lloyds Banking Group, which helped round out a good day for shareholders. While environmental campaigners decried the return of big profits for extractive industries, the payouts were welcomed by investors, who suffered last year as the pandemic forced companies to rein in their spending and slash dividends to preserve cash. Vaccine rollouts and the gradual easing of Covid restrictions have helped lift consumer spending and some travel, giving hope that economic recovery is on the horizon. "*Investors have been struggling to set aside lingering worries about rising inflation and Covid cases, but bumper earnings from some of the UK's biggest companies have done their utmost to offset that*," Danni Hewson, a financial analyst at AJ Bell, said. "*Amidst all the gloom and angst of the last months, this is the day investors will have been hoping for and one that will boost confidence that recovery is well under way*." Quarterly dividend payouts – based on when distributed– are below their pre-crisis average of £29.4bn, according to Centre member **Link Group**. However, they have grown 51 percent to £25.7bn in the three months to June, as compared to 2020. Rising commodity prices, which lifted miners and oil majors, as well as the Bank of England's gradual removal of Covid dividend caps for the UK's largest banks, fuelled the increase. That trend has continued, as soaring global oil prices helped Shell report its highest profit in two years, allowing the board to raise its dividend by almost 40 percent and launch share buybacks worth $2bn. Lloyds Banking Group swung back to profit and announced the resumption of dividends, with an aggregate £473m payout to shareholders. Drinks company Diageo, which owns the brands Johnnie Walker whisky and Smirnoff vodka, announced share buybacks and dividends worth £1bn. Rio Tinto announced its largest ever interim dividend, saying it planned to pay shareholders

$9.1bn. Barclays, meanwhile, said that it planned to buy back up to £500m of shares from its investors, while paying a half-year dividend of two pence a share, resulting in a total £800m return for investors.

NatWest Group returned to profit and announced plans for a fresh round of dividends and share buybacks that will result in a payout of at least £190m for the Treasury. The majority taxpayer-owned lender, once known as Royal Bank of Scotland, said it planned to pay investors dividends worth £347m at 3p a share after recording a £2.5bn profit in the first half of the year as the British economy recovered from Covid-19. The government still holds a 54.7 percent stake in the lender, more than a decade after its £45.5bn state bailout during the 2008 financial crisis, so at least half the payout will go to the exchequer. Taxpayers could be in line for an even larger payout, however, as NatWest revealed plans for a £750m share buyback this year, and aims to distribute at least £1bn a year to shareholders for the next three years. It came as the bank returned to profit in Q2, having swung to a loss of £1.3bn last year after it put aside cash to cover potential customer defaults during the Covid crisis. Pre-tax profits for the three months to the end of June jumped to £1.6bn, easily beating consensus estimates of £860m. *The Treasury announced last month that it would start to sell off further chunks of taxpayers' holdings in NatWest.

Royal Dutch Shell raised its dividend and launched a $2bn programme of share buybacks after surging back to profit as oil prices rebounded. The Anglo-Dutch oil giant posted a $2.6bn second-quarter profit on the oil industry's standard "current cost of supplies" basis, up from a record $18.4bn loss a year earlier when it booked huge write-downs after oil prices crashed. Stripping out such write-downs and other one-off charges, Shell's adjusted earnings soared to $5.5bn, almost *nine times* higher than the $638m it reported a year earlier, and ahead of analysts' forecasts. The result was driven by a more than doubling in oil prices with Brent crude, the global benchmark price, averaging almost $69 a barrel in Q2.

ESG Corner

Listed UK companies would have to explain publicly why they have failed to make at least two out of every five board directors women, rather than men, said the Financial Conduct Authority (FCA) in a consultation document. They would have to make a statement to shareholders annually on whether or not they had hit the gender target and, if not, why not. At least one top position on the board – chairman, ceo, fd, or senior independent director - should be held by a woman, said the FCA. Further proposals for future examination include a possible requirement for each listed company board to contain someone from an ethnic minority background. Santander has decided that its bankers will get bigger bonuses for hiring more female and ethnic minority bankers from next year. The number of women on the boards of directors of Britain's 350 top publicly traded firms has jumped by more than 50 percent since 2015, meaning that 34 percent of all board seats are now held by women, an independent panel said in a report published last February. Women hold almost 44 percent of the board seats at companies in France's 40 biggest publicly traded companies, the UK panel said. The corresponding number for Norway is 39.5 percent, Sweden 37.3 percent and Italy 36.5 percent.

*Banking expert Chris Skinner, ceo of **The Finanser,** a research and media firm focused upon FinTech and the future of finance, cited a recent NYU Stern report about the pitiful level of knowledge about ESG issues in the leadership of US corporations. The study by NYU Stern looked at the ESG credentials of 1,188 board members of the *Fortune 100* companies. *According to the study, in the "E" category where climate and water are two areas of material importance to most companies and investors, among all 1,188 Fortune 100 board members studied, a total of* ***just five*** *had relevant experience. The health care, financials, and insurance sectors have material "E" risk (most notably, climate change) yet only 11 members of 149 in the sector study group had "E" credentials. The "S" category had the highest concentration of ESG board expertise at five percent of the 1,188 board members studied. Most of that five percent was dedicated to supporting an increase in the number and influence of women in the executive and board suites. In the "G" category, just eight board members of the 1,188 studied had expertise in cyber/telecom security, an area where the material financial risk is increasingly apparent, and very few directors had authoritative experience with ethics, transparency, corruption, and other material "G" issues.*

*From next year, the size of bankers' bonuses at **Santander** will depend partly upon the number of women and ethnic minority hires it makes in the various countries in which it operates, announced its vice-chairman Bruce Carnegie-Brown. Santander's proposed *score-card* on such issues will impact bankers' returns from long-term incentive plans (LTIPs) and the like.

*Companies are downplaying shareholder revolts against executive reward packages, revealed a research report published by the **Financial Conduct Authority (FCA).** It found that top companies tended to provide little detail in disclosures on why significant votes at agms against remuneration proposals were registered unless there was a positive message (e.g. *the shareholder dissent was less than previously received*). Careful wording was used by companies when reporting shareholder dissent, said the FCA. Its joint research with Portsmouth University covered remuneration policy disclosures of a sample of FTSE 350 companies from before and after the introduction of the 2018 UK Corporate Governance Code, reported **EQ**'s latest bulletin. Highlights included: *Companies are disclosing more information about engagement with shareholders and, to some extent, with the workforce than previously. *Companies are disclosing more information about alignment with long term shareholder interests. *Disclosures about remuneration policies had increased, though there was no significant change in disclosures for some items, such as the ability to recover or withhold sums or share awards. *Most companies show evidence linking awards to delivery of strategy and long term performance, but few provided information confirming that they did not reward poor performance in their policies. *Many companies used non-financial KPIs (*performance metrics*) for executive reward, but often did not explain why they were chosen *Many companies used boilerplate wording from the Code and lacked detail *There was a wide variation in the disclosures between different sectors of the FTSE. *Where dissent was registered and discussed, it was often due to company-specific issues and not the issues reported as a result of Code requirements.

Easing of listing rules proposed

The Financial Conduct Authority (FCA) launched a controversial consultation on the current listing regime, aimed at fast-tracking the recruitment of high growth young companies to listed status, following recommendations made in Lord Hill's Listing Review, reported **EQ**. The government is trying to attract more high-tech companies to list in London, either on the FTSE or AIM indexes. The key proposals for changes to the listing regime include: *Allowing dual-class share structures, which would permit owners to retain control, despite holding only a *minority* of shares, in certain premium listings. *Reducing the number of shares that have to be in public hands (free float) from 25 percent to ten percent. *Increasing the minimum market capitalisation threshold from £700,000 to £50m for premium and standard listings. This would apply to a new listing, not as a continuing obligation. *Other minor changes to the listing rules, the Disclosure Guidance and Transparency Rules and the Prospectus Regulation Rules to simplify them. The consultation closes on **September 14** with expected changes to the rules by late 2021. Lord Hill's review proposed reforms to the UK listing regime with the aim of attracting the most innovative and successful firms and helping companies access the finance they need to grow, said the Treasury. The consultation takes forward three of his recommendations, including that the government carry out a fundamental review of the UK's prospectus regime. It seeks to achieve four key objectives: *to facilitate wider participation in the ownership of public companies; *to improve the efficiency of public capital raising by simplifying regulation and removing the duplications that currently exist in the UK prospectus regime; *to improve the quality of information that investors receive and *to improve the agility of regulation in this area. It proposed that the two regulatory issues which the Prospectus Regulation deals with – admissions of securities to stock markets and 'public offer rules' – are dealt with separately in future. The consultation then proposes that the FCA is granted new powers to make rules, in place of the current Prospectus Regulation.

Project manager caught by IR35

The Upper Tribunal upheld a First Tier Tribunal decision that a project manager was within IR35 as he would have been an employee if he had been engaged directly, reported Jeremy Edwards of Centre member **Baker McKenzie**. The case (Northern Light Solutions Ltd v HMRC UKUT 134 (TCC) concerned the pre-April 6 2021 position according to which it was for the contractor to determine whether he was inside or outside IR35. In this case, a contractor providing project management services through his personal services company lost his appeal to be taxed as self-employed (i.e. outside IR35). The contractor worked for one engager for nine months on a project, had a break of about five months and then returned for another project with a contract lasting more than 18 months. The contractor argued that because the contracts related to specific projects and there was no obligation for the engager to provide work or a different project once the first finished, that there was insufficient mutuality of obligation to determine that the contractor would have been taxed as an employee if engaged directly. However, the tribunal found that the contractor was required to work during the period of the contract and that this was sufficient to show mutuality of obligation. The tribunal indicated that the fact that a contractor may not be offered further work once a contract ended was not sufficient to escape IR35. "*This decision will be relevant for companies now trying to determine whether contractors are inside or outside IR35 post April 6. It indicates that a relatively low threshold for mutuality of obligation is sufficient for a contractor to be within IR35*," said Mr Edwards. HMRC's view appeared to be that mutuality of obligation is assumed almost as soon as a contract is entered into between two parties. This was reflected in the CEST tool, which does not have any questions addressing mutuality of obligation. HMRC has updated its Employment Status Manual with guidance on how it views presenters following recent decisions in this sector. This indicates that for contractors who jump between projects, the uncertainty of where future work will come from is not determinative that they will be outside IR35. The way in which they work during each contract must be assessed.

WORLD NEWSPAD

Chinese crackdown on private wealth

President Xi Jinping vowed to "adjust excessive incomes" in a warning to the country's multi-millionaires that the state plans to redistribute wealth to tackle widening inequality. The president told the Chinese Communist party's central financial and economic affairs commission that the government should "*regulate excessively high incomes and encourage high-income groups and enterprises to return more to society*". The commission said it would pursue its "*common prosperity agenda*", which has become the main focus of China's policy-making after reports of discontent within the party's central committee over the rise of a new class of wealthy entrepreneurs. The policy goal comes amid a push by Beijing to rein in the country's largest private firms in industries ranging from technology to education.

Analysts noted that the gaming and social media firm **Tencent,** one of China's biggest tech groups, said it would expand its social commitments, as it reported a jump in second-quarter profit. Tencent ceo and chairman, Pony Ma said the company was in business to help wider society by "*deploying our technologies and expertise to help small and medium-sized businesses, public services and corporations collaborate internally and connect with their users externally*". Pony Ma remains of member of the Chinese parliament and has demonstrated his commitment to employee ownership by giving employees shares from his personal holding in addition to the corporate scheme.

The ten-point plan, which runs to the end of 2025, said laws would be strengthened for important fields*, such as science and technological innovation, culture and education.* The plan said the Chinese government aimed to tackle monopolies and "*foreign-related rule of law".* Regulations relating to China's digital economy, including internet finance, artificial intelligence, big data, cloud computing etc. would be reviewed. This intensified concerns that Beijing's crackdown on technology and private education companies was set to continue and expand in years to come. Shares in many Chinese companies listed in the US, Hong Kong and mainland China have fallen sharply this year as investors' concerns grow over the crackdown.

Beijing has already launched anti-monopoly investigations into some of the country's biggest technology firms and has punished other businesses for alleged data and security infringements. The latest victim of President Xi's iron fist was Chinese electric car maker **BYD**, whose plan to sell shares in its computer chip making unit was suspended, due to a regulatory investigation into the law firm advising the company. The plan to list on Shenzen's Nasdaq style market ChiNext was filed last May. The Shenzen Stock Exchange said Beijing Tian Yuan Law Firm, one of China's biggest legal services companies, was being investigated by China's Security Regulatory Commission regarding the listing. BYD Semiconductor had aimed to raise at least \$421m (£307m) from the sale of shares. It planned to invest the money back into the business as global carmakers struggle with a shortage of computer chips.

Next, Chinese ride-hailing giant **Didi** was forced to halt plans to launch in the UK and continental Europe. The Uber rival had been planning to roll out services in Western Europe, including major British cities. Didi was consulting the team working on the project on reassigning new roles or potential redundancies. The move came as Chinese firms faced intense scrutiny by Western nations and Beijing cracked down on data privacy.

Chinese private tutoring firms, who achieved New York listings at previously high valuations, have been told to run not-for-profit models and property firms have been told that houses are not for speculating. The common theme, said Neil Campling at Mirabaud Research, is that "*social inequality is being stamped on*." Once again, shares in Tencent**,** the publisher and worldwide gaming company, took a hammering after the authorities cracked down on child players. Tencent said in response that it would limit children's access to its most popular video games to just one hour per day. Pony Ma has awarded significant equity to his employees via stock options, so whatever hurts Tencent hurts its employees too. State-controlled news media condemned online video games as '*spiritual opium,'* as game addiction among Chinese children reached record levels. A Chinese economic journal accused video games companies of '*destroying a generation'* and compared online games to "*electronic drugs*,'' Prosecutors in Beijing began a civil lawsuit against a subsidiary of Tencent, saying the "youth mode" on the company's popular social messaging app *WeChat* did not comply with laws protecting minors. The lawsuit was initiated by Beijing's Haidian district people's prosecutors against Shenzhen Tencent Computer Systems, according to a filing posted on JCRB.com, a website run by China's top prosecutor, *Reuters* reported. The document did not say how WeChat's "youth mode" broke Chinese law.

*Centre member **Bird & Bird** sent clients a comprehensive briefing on China's new Personal Information Protection Law, which comes into effect on November 1 *this year.* Bird & Bird said: "The Chinese GDPR is finally here and implementation is imminent! Non-compliance with the PIPL may lead to administrative fines of up to five percent of annual turnover or RMB50m (approx. US$7.7m) and executives directly responsible may be subject to fines between $15,000 and $154,000 and more significantly, they may be prohibited from assuming managerial positions in relevant organisations for several years. Although there are still question marks concerning some key considerations, organisations (*who operate in China*) should start to take implementation steps including updating their privacy policy and consent mechanisms for personal information processing, reviewing data processing agreements with third parties as well as adopting a set of comprehensive internal data compliance policies."

France: Leading French conservative candidate for next April's French Presidential election **Valerie Pecresse** wants to see all listed French companies dedicate at least ten percent of their share capital to their employees. Mme Pecresse, who was recently re-elected as president of the Ile de France region, told the weekly magazine *Le Point* that, if she wins the presidency, she will order quoted French companies to increase their employee share ownership to what would be the new ten percent minimum target. Non-quoted companies would not be obliged to follow suit, but they should "*travel in the same direction*." The reconciliation of work and capital would be at the heart of her campaign programme, she added.

US: The Crosby Group, a global leader in lifting, rigging, and load securing hardware, announced that all global members will participate in the equity growth of the business. This programme, designed and supported by KKR who acquired Crosby in 2013, provides everyone employed at the time of a future sale or liquidity event, with a meaningful financial stake in Crosby's growth, regardless of location or role. *KKR and Crosby firmly believe that broad based employee ownership is a key pillar in driving employee engagement and, in turn, building a stronger business.* Ceo Robert Desel said: "*All 1,400 in our global team impact the value of the business and so should see the benefit from the value they help to create*." Desel continued: "*This programme provides incredible alignment across the entire team, right through to KKR, elevating employee engagement and furthering our shared commitment to our core values of safety, reliability and innovation.*" **Pete Stavros**, now co-head of Americas Private Equity at KKR, added: "*Crosby has a long, rich heritage of market leadership and innovation fuelled by the dedication of its employees, many of whom have been part of The Crosby Group team for decades. We, alongside the management team, are thrilled to introduce this programme in order to commemorate these contributions and align every employee through ownership in Crosby's equity appreciation.*"

*US ceo reward has risen by an eye-watering *1,322 percent* since 1978, according to a report by the Washington based not-for-profit think tank, *Economic Policy Institute* (EPI). When taking into account stock awards, which make up more than 80 percent of the average ceo's compensation package, growth in US ceo reward is running ***73 times higher*** than the growth of the typical employee's pay, which climbed only 18 percent over the same time period. Ceo compensation soared by 19 percent between 2019 and 2020 alone, said the EPI. *The ceo -to-employee pay gap stands at **351 to one**, compared to a mere 15 to one gap in 1965.* In just one year, the average ceo makes almost nine times what the average person will earn over a *lifetime*. The federal minimum wage would be $24 an hour today had it kept pace with worker productivity, rather than ***$7.25***, where it's been stuck since 2009.

In addition, inflation has resulted in a nearly two percent pay cut over the past year despite modest gains in hourly wages, according to the *Bureau of Labor Statistics*. SMEs, retail giants and fast-food chains are having difficulty in filling poorly-paid positions – even though there are one million more unemployed workers than there are open jobs. A significant segment of the American labour force – between 25 percent and 40 percent– made more money by being unemployed than they ever make working full-time at a minimum wage job. $7.25 an hour is $290 a week *before* taxes, compared to $300 in weekly federal benefits that pandemic unemployment assistance provided, *before* taking into account the additional weekly state benefits that those on unemployment received.

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