

In this newsletter, Fiona Downes, Head of Employee Share Ownership at **ifs ProShare** provides a comprehensive update of our lobbying activities and we have guest articles from Gareth Amdor, Partner, SJ Berwin LLP and Shelley Doorey, Director, Corporate Employee Financial Services, UBS.

EBTs and trustees' powers

Trustees of Employee Benefit Trusts have to take various decisions in their capacity as trustee. Such decisions can include whether to make awards to certain employees, whether to enter into contracts (such as loan agreements) or amendments to those contracts, and whether to vote shares that they hold.

In any situation where trustees have to take such decisions, there are two key questions they should ask themselves. Firstly, do they have the power to do what is proposed and secondly if they do have the power, would the proposed course of action (or inaction) constitute a proper exercise of that power? These questions may be straightforward to answer, but sometimes this will not be the case.

This is an important issue for trustees as they will not wish to do something that amounts to a breach of trust. So what should trustees do to address these questions?

The answer to the first question – does the trustee have the power to do what is proposed – should be contained in the Trust Deed, so that should be a straightforward question to answer.

The second question – would it constitute a proper exercise of that power – is potentially more difficult to answer. The following points are relevant:

1. As a matter of English law, a trustee must act in the best interests of its beneficiaries. Consequently, any action taken by the trustee with the aim of benefiting the company that established the trust would generally constitute a breach of trust – the Trust Deed itself will contain provisions prohibiting such acts. That said, it should not constitute a breach of trust if a trustee acts in a way that it considers to be in the best interests of its beneficiaries even if at the same time that act incidentally benefits the company.
2. The trustees should take all relevant factors into account – such as the purpose of the trust, the background to, and detail of, the proposal and the impact on the beneficiaries as a whole if the trustees did, or did not do, what is proposed.
3. The trustees should also consider whether in the particular circumstances it would be prudent to consult with beneficiaries before taking any decision.

Ultimately, it is a decision for the trustees whether or not a course of action will constitute a proper exercise of their powers. Provided, however, that their decision is governed solely by what they consider to be in the best interests of their beneficiaries and they reach that decision on a reasonable basis having taken all relevant factors into account (including any beneficiary comment), then they should have properly discharged their trustee duties.

Gareth Amdor, Partner, SJ Berwin LLP

Lobbying update

APPG

After reporting on our ESO presentation in the House of Commons to the All Party Parliamentary Group (APPG) on Insurance and Financial Services, we are pleased to announce that we have been invited to participate in a new APPG on Employee Ownership to be chaired by Sarah McCarthy Fry, MP for Portsmouth North and Parliamentary Private Secretary to John Healey, Economic Secretary to the Treasury. We are excited about this development, which will give us new opportunities to engage with key policymakers. We will keep you updated in future newsletters.

Blue Sky Group

At recent meetings we have been asked how the ESO landscape in the UK might change in the medium term. Consequently, we have decided to establish a "Blue Sky" focus group to discuss simplification of ESO legislation and international harmonisation. We plan to hold the first meeting sometime in July with an intention to present the results to policymakers later in the year. If you would like to participate in this project, please get in contact.

MiFID – clear as mud!

Like many of you, we have been scratching our heads about the thorny issue of the Markets in Financial Instruments Directive (MiFID), due to be implemented on 1 November 2007, and have consulted the Treasury, the FSA and the EU Commission about the Directive's impact on share plans. As we have come to expect with EU Directives, the answer is never simple! The situation is very clear for companies who manage their share plan administration in-house: they are not subject to EU or FSA regulation. On the face of it, Article 2(1)(e) of MiFID seems to contain a very helpful exemption, to "persons which provide investment services consisting exclusively in the administration of employee-participation schemes". However, this particular provision of MiFID does not override the existing UK legislation, which states that outsourced employee share scheme activities are exempt only where the third party also acts as a trustee.

continued on page 2

Wofed (Workplace Financial Education) group

Financial Education in the Workplace Research Seminar

As reported in the last newsletter, *ifs ProShare's* Wofed group commissioned the University of York to undertake a pilot study into Employers' Attitudes to Financial Education in the Workplace as part of its remit to develop a workplace financial education programme. The results were presented by Professor Andrew Pendleton at our members-only "Financial Education in the Workplace" seminar held last month at SJ Berwin's magnificent riverside offices nestling on the northeast side of Southwark Bridge.

Although Professor Pendleton was disappointed with the response to the survey, it nevertheless provided an interesting picture of financial education provision. He reported that financial education in the companies responding to the survey tends to focus on subjects related to employee benefits, such as pensions and share plans, rather than underlying principles of financial management. It is apparent that this financial education tends to be offered via third parties and that companies are wary of straying into the arena of regulated financial advice. Professor Pendleton indicated that there is much more to discover about financial education provision and is excited about being involved in further research and development on this issue.

Delegates were also lucky enough to hear a lively presentation from Pat Sims at Orange about their experience of offering financial education. Orange is committed to providing education to its workforce to enable employees to make informed choices about financial decisions but has discovered that it is very much a moveable feast and a difficult subject to tackle.

The report on the pilot study will be finalised this month and sent to all members by email, irrespective of whether or not they attended the seminar.

We will keep members informed of Wofed's progress in future newsletters.

New website

You will all no doubt be delighted to know that ifsproshare.org is undergoing a much needed facelift, which will be revealed later in the year. The new website will be much more modern looking and user friendly (not difficult, we know!). As well as having a members-only area, it will also feature a public search facility to find advisers, administrators and companies involved in employee share plans. In order to implement this facility we need you to complete a questionnaire, which we will send to all members. Please ensure that you return yours if you want your organisation's details to be included in the release of the first phase of the new website. We will keep you updated with website progress in future newsletters.

HMRC's *Share Focus* updates

The Employee Share Schemes Unit (ESSU) at HMRC has been busy this year. After waiting three years for an issue of *Share Focus*, we have been treated to two within two months. If you have not already seen them, they can be found on: www.hmrc.gov.uk/shareschemes/news/share_focus_newsletters.htm

HMRC has confirmed that the SIP and SAYE review is still ongoing and that results will be published in due course, subject to ministerial approval. We will keep engaging on this issue and keep you updated with any news.

Lobbying update continued

The EU website allows people to submit questions on MiFID via this weblink: http://ec.europa.eu/internal_market/securities/docs/lis/questionnaire/questions_en.pdf. You may be interested to see that Question 67 about the exemption in Article 2(1)(e) as yet remains unanswered.

We have prepared a paper to clarify the situation which has been sent to all members and is available to download at www.ifsproshare.org/eso/eso_guidance.html. If you have any questions on this matter, please send them to us. We will liaise with the relevant bodies to co-ordinate the appropriate answers and make them available to members.

Parliamentary Questions

As part of our lobbying activities, we engage with a cross-party selection of MPs interested in and supportive of employee share ownership. One such MP, Mark Hoban, the Shadow Financial Secretary who represents the Fareham constituency in Hampshire, agreed to ask questions in Parliament about the workplace pensions advice tax credit in connection with our work on Wofed. The questions were submitted on 7 June but the answers had not been published at the time of going to press. See questions 25-27 on this weblink: www.publications.parliament.uk/pa/cm200607/cmordbk1/70607w01.htm.

Thoresen Review

ifs ProShare submitted a response to the Treasury's Thoresen Review of Generic Financial Advice (GFA) in April (available on: www.ifsproshare.org/eso/eso_representation.html), in which we outlined the need to ensure that any GFA should take into account the important role that employers can play in providing access to generic information through the workplace. We are currently looking to arrange a follow up meeting with the Review team to highlight our concerns and discuss the likely structure and delivery of the new generic advice model.

New vice chair of *ifs ProShare* Faculty

We are delighted to announce the appointment of Anthony Nelson as vice chair of the *ifs ProShare* Faculty Board to support chair Matthew Orr and the other members of the Faculty Board.

Anthony Nelson is vice chairman of Citigroup and chairman of Southern Water. Prior to joining Citigroup, he was MP for Chichester from 1974 to 1997, during which time he held posts as Minister for Trade and Industry and Minister of State at HM Treasury between 1992 and 1995.

Addressing the challenges of deferred annual bonus plans

Over the past few years the number of UK-listed companies introducing deferred annual bonus plans has increased significantly. Although these arrangements vary, the general framework is that the executive defers his or her annual bonus, either in part or whole, into company shares. These shares are then restricted for a period of time. The shares may be matched with additional shares, typically with a performance condition attached to them.

The prevalence of these plans has been fuelled in part by the investors' desire to better align the interests of executives with shareholders. Whilst the investor interests are being addressed, there are a number of issues that companies and executives face by virtue of the structure of these plans. One of the key differences, between this and traditional share options, is the fact that shares will be delivered into the hands of executives at a fixed point in time, which may trigger a tax liability.

This presents some new challenges. For example, at the point that a tax liability arises, the executive will have to decide how to cover this liability and the company will have to consider how to administer the calculation and withholding process. Whilst UBS does not provide tax advice, it has worked with clients to develop a solution to address this challenge. In essence, executives are invited to make an online election, prior to a vesting, as to how they intend to cover the liability. The executive may opt to pay cash, sell a sufficient number of shares to cover the liability or sell all the shares. The process is managed by UBS and the company receives the withholding amount at the appropriate time.

In conclusion, as a result of the rise in use of share-award based structures, companies are considering how best to cope with the administrative nuances.

**Shelley Doorey, Director,
Corporate Employee Financial Services, UBS**

ifs ProShare members shine at recent Awards ceremonies

The inaugural Chambers AOB Company Secretarial Awards were announced at a black tie event held at the Renaissance Chancery Court Hotel in Holborn on 17 May and the fifth Employee Benefits Awards were held at the Park Lane Hilton on 8 June. Our congratulations go to the following *ifs ProShare* members who were all winners at these Awards:

Asda
BG Group
BSkyB
HBOS Employee Equity Solutions
Marks & Spencer (double winners)
The Capita Group
The Royal Bank of Scotland (triple winners)

See the following weblinks for details of all the winners and entrants:
<http://www.chambersandpartners.com/chambers-awards-AOB.aspx>
<http://www.employeebenefits.co.uk/cgi-bin/item.cgi?ap=1&id=2790>

Important dates for your diary!

Our full programme of events can be found on our website www.ifsproshare.org/events including our Autumn Training Course programme, but two dates you mustn't miss are:

Thursday 27 September – Conference and Exhibition, for more information and to book your place online, visit our website at: <http://www.ifsproshare.org/events/conference/index.cfm>

Tuesday 20 November – Annual Awards Dinner, for more information see below and to reserve your table online please visit: <http://www.ifsproshare.org/events/awards07/index.cfm>

Membership renewal

We are delighted to welcome back BP, BT, HBOS Employee Equity Solutions, Killik Employee Share Services and Lloyds TSB Registrars as Gold Members. Thank you to all of you who have renewed your membership. If you have not yet renewed your membership you will receive a reminder but if you have any queries please contact Kylie Hinge on 020 7444 7141 or khinge@ifslearning.com.

ifs ProShare Annual Awards 2007

We are pleased to announce the launch of this year's Annual Awards which feature two new categories: one for most innovative use of technology and one for very small companies with fewer than 100 employees. The entry deadline is 1 October and the Awards Ceremony will be held on 20 November at the New Connaught Rooms. We are excited that Matt Dawson will be our Guest Speaker. Anyone booking a private champagne reception area will be able to meet Matt and have their photo taken with him and the Awards Host, Andrea McClean. For the first time, entrants and attendees will be able to complete entry forms and table booking forms online via www.ifsproshare.org/events/awards07/index.cfm



STOP PRESS! RESULTS OF 2006 SIP & SAYE SURVEYS

At the time of going to press, the results of the 2006 Annual SIP & SAYE surveys had just been presented by Professor Andrew Pendleton at a seminar hosted by HBOS Employee Equity Solutions in their Old Broad Street auditorium. Attendees were also treated to lively presentations from Pinsent Masons' William Franklin on the effect of IFRS2 and Michael Bullen from GlaxoSmithKline about their share plans and total reward programme. The seminar slides and survey reports will be sent to all members. Please contact us if you have not received your copies.