



## **Minutes of meeting: Implementation Group on Employee Ownership, 1pm 19 March 2013 at Gripple, Sheffield**

### **Attendees:**

Claire Hobson (Deputy Director, Wider Business Environment, BIS)  
James Bousher (BIS)  
Susan Clews (ACAS)  
Joseph Lampel (Cass Business School)  
Sarah Deas (Co-operative Development Scotland)  
John Goodman (Co-operatives UK)  
Iain Hasdell (Employee Ownership Association)  
Michael Mealing (Federation of Small Businesses)  
Graeme Nuttall (Field Fisher Waterhouse)  
Andy Davies (Gripple)  
Colin Strudwick (HMRC)  
Joanne Gibson (HMRC)  
Chris Manners (ICAEW)  
Charlotte Cool (John Lewis Partnership)  
David Pett (PettFranklin & Co and representing the ESOP Centre)  
John Williams (Santander)  
Gill Wilde (Skye Instruments)  
Janet Williamson (TUC)  
Derek Walker (Wales Co-operative Centre)

### **Apologies:**

Jo Swinson (Minister for Employment Relations and Consumer Affairs)  
Heidi Munn (BIS)  
Campbell McDonald (Baxi Partnership)  
Rannia Leontaridi (Cabinet Office)  
David MacLeod (Employee Engagement Taskforce)  
Malcolm Hurlston (ESOP Centre)  
Patrick Burns (Prospects Services)  
Kathleen O'Reilly (Company Law Committee, The Law Society)

## **Action Points:**

### **Summary Note:**

1. BIS to assess the benefit of an informal discussion with share plan practioners to identify any further non-tax regulatory burdens that might exist.
2. BIS to continue to work with the financial sector on raising the awareness of employee ownership within banks and financial institutions.
3. Wales Co-operative Centre to provide BIS with case studies of how employee ownership has been used successfully in a rescue situation.
4. BIS to circulate note of rescue pilot workshop to Implementation Group once it has been cleared with attendees.
5. BIS to circulate draft of guidance to employees to implementation group once it has been completed with ACAS.
6. Group members to send comments on the legal templates (focussing on providing solutions where possible) to BIS by 28 March, with the aim of getting the templates circulated shortly after.
7. The communications workstream is to continue to develop plans for an employee ownership day on 4 July and to work on solutions on sourcing additional resources.
8. BIS and communications workstream to discuss Cabinet Office concerns and present an updated proposal to Group in due course.

### **Item 1: Introduction and Actions from last meeting**

Claire Hobson welcomed group members to the third meeting of the implementation group on employee ownership. Claire apologised on behalf of Jo Swinson for being unable to chair this meeting as she is in Committee Stage in Parliament. The group was then shown a video recorded by Jo thanking Andy Davies and Gripple for their hospitality and encouraging the group to support the awareness raising campaign.

James Bousher then proceeded to provide a progress report on actions from the last meeting, the majority of which had been completed or superseded. James informed the group that the only ongoing action was action 7, regarding generating case studies on employee ownership, which the communications workstream is currently undertaking.

## Item 2: Progress Report

James then provided an update to the group on progress on the recommendations of the Nuttall Review.

On the work on **Share Buy Backs** James outlined that the government response was published in February and is available on the gov.uk website. He then informed the group that the secondary legislation necessary to enact the proposed changes was laid in Parliament at the beginning of March and, subject to approval by Parliament, will come into effect on 30 April 2013 ([The Companies Act 2006 \(Amendment of Part 18\) Regulations 2013](#)).

On the **perpetuity restrictions**, James outlined that discussions are ongoing with Graeme Nuttall and welcomed involvement from other group members. He explained to the group that there were still some questions around the evidence-base required to get agreement to legislative change and suggested the option of a call for evidence to attain such information. Graeme reaffirmed his view that he felt such a change would be possible within current legislation and that it would be welcomed by share-scheme practitioners and would be a good awareness-raising tool.

On **regulatory burdens and data collection**, James indicated that work on this was ongoing. He asked the group on their opinion of whether a call for evidence to identify any non-tax regulatory burdens or gaps in reporting was necessary. The group agreed that, given this issue was addressed as part of the Nuttall Review, it would not be the best use of resources to replicate. David Pett suggested an informal discussion with share plan practitioners to see if they are aware of any non-tax related issues which may need addressing. Graeme agreed that this could be a beneficial exercise.

*Action 1: BIS to assess the benefit of an informal discussion with share plan practitioners to identify any further non-tax regulatory burdens that might exist.*

On the **access to finance forum**, James informed the group that the forum had met on the 12 March. He outlined that the view from financiers was that there was a distinct lack of demand for employee ownership specific products beyond those that exist at present. As a result, the forum in its current form has been suspended, however work will continue with the financial sector where necessary. Graeme indicated that he had hoped that the finance forum would help on awareness raising, suggesting a detailed list of who to contact regarding employee ownership in each high street bank. Several delegates expressed the view that there was potential demand for new products but that until there was more activity in the sector the nature and extend of these products would remain unclear. Claire Hobson reassured Graeme that work on awareness raising within the financial sector will continue.

*Action 2: BIS to continue to work with the financial sector on raising the awareness of employee ownership within banks and financial institutions.*

On the **rescue pilot work**, James informed the group that an initial workshop was held on 11 March at BIS. He informed the group that a number of useful outcomes were developed at the workshop and would be built on to produce outputs and guidance that could be passed to intermediaries. Key messages identified were: the need to act before formal administration; the need for case studies; the importance

and difficulties of financing the change; and the need to remember that employee engagement is also necessary alongside share ownership for the change to be a success. Derek Walker indicated that the Wales Co-operative Centre have some case studies that illustrate how employee ownership has been used in a rescue situation. Derek also wanted to support the note of the last meeting that employee ownership should not be seen as the last option of a business.

*Action 3: Wales Co-operative Centre to provide BIS with case studies of how employee ownership has been used successfully in a rescue situation.*

*Action 4: BIS to circulate note of rescue pilot workshop to Implementation Group once it has been cleared with attendees.*

On the **guidance**, James indicated that BIS is continuing to work with ACAS and should be in a position to circulate an initial draft of the guidance focusing on employees in the next few weeks. Iain Hasdell told the group that the EOA is still working on a simple guide that is aimed at explaining the different models of employee ownership to business owners that might be considering a transition. He said that they plan to publish this on 4 July. John Goodman also informed the group that Co-operatives UK, alongside Wales Co-operative Centre and Co-operative Development Scotland, are publishing a more technical guide, dovetailing the others being produced entitled "Simply Buy-out". He again indicated that a 4 July launch is being aimed for.

*Action 5: BIS to circulate draft of guidance to employees to implementation group once it has been completed with ACAS.*

On the work focusing on the **Institute**, Graeme Nuttall indicated that the working group is continuing to meet and see a strong need for the Institute. Graeme suggested that at first the scope might be limited, but eventually he sees it as a membership body with accreditation and training courses as employee ownership grows. Claire Hobson asked what Graeme sees the main risks being at present. Graeme felt that despite the working group seeing the need for the institute, the group is necessarily narrow so there is the risk that those outside the working group might not agree.

### **Item 3: Legal Templates**

Claire Hobson started by welcoming David Pett to the group and thanking him for his commitment to produce the model legal templates on a pro-bono basis. Claire also thanked HMRC for their continued assistance with David and BIS on developing the templates.

David then gave a brief outline of the document to the group. He explained that he had drawn it from his experience of advising on the structuring of employee-owned companies and has developed it to be as enabling as possible, allowing a full spectrum of shareholding scenarios. David expressed that the model documentation was longer than he hoped it would be, as, for example, in the case of the model trust deed, it was necessary to include all powers and discretions which may be necessary over the lifetime of the trust as once formalised it can be very difficult to change an employee benefit trust. David then informed the group that he is waiting for confirmation from HMRC that the trust can be classed as an s86 trust.

David also explained that the structure envisaged would not prevent a sale of the company. If, upon a sale of the company there would be surplus assets (cash) in the trust, the trust deed would allow such surplus assets to be returned to the company, thereby enhancing the 'exit value' for the benefit of its former shareholders. He also explained that the deed pre-supposes that the trustee is sole guarantee company wholly-owned by the employee-owned company. This is consistent with Graeme's recommendations in his Review.

David also explained that he has produced model articles of association for the employee owned company itself, again aimed at being as enabling as possible, as well as a narrative description of the model ownership structure. The articles provide for employee directors, but again, are not prescriptive on details.

Comments from the group included the need to look at how employee engagement might be encouraged in the documents, with focus on the number of employee directors and the need for a balance between elected board members and appointed executives. David highlighted that these aspects are flexible and can be changed depending on the wishes of the company using them.

Janet Williamson, Derek Walker, Sarah Deas and John Goodman expressed concerns that the default product could appear, at present, to be a bit restrictive and that, as this document will also serve as a communications tool, it is important that initial impressions shouldn't appear limited. Iain Hasdell suggested this could be addressed by emphasising the variable points to a greater degree.

Charlotte Cool raised a concern about the Chairman of the board being ex-officio Chairman of the employee council. Janet Williamson also agreed that there needs to be an employee voice independent of management.

Graeme Nuttall indicated that he welcomes the document greatly and thanked David for putting it together. He expressed there are all the necessary building blocks and, by their very nature, the documents cannot cover all the variable aspects. He agreed that it is important to make sure that where flexibility exists it is emphasised.

Iain Hasdell suggested that greater utility can be gained by getting the documents out as soon as possible, rather than slowing the release by trying to perfect them.

Going forward it was agreed that group members would send in their comments, focussing more on solutions to issues than identifying them, to BIS, who will continue to work alongside David in developing the product. It was agreed that the documents are very close to completion and that the focus should be on getting the templates circulated as soon as possible.

*Action 6: Group members to send comments on the legal templates (focussing on providing solutions where possible) to BIS by 28 March, with the aim of getting the templates circulated shortly after.*

#### **Item 4: Employee Ownership Day and Champions**

Iain Hasdell then outlined to the group the proposed plans for an employee ownership day on 4 July. He explained that the aim of the day is to fit in with the awareness raising workstream identified in the Review and will act as an excuse for a

prolonged period of awareness raising. He outlined that the consensus of the communications workstream was for the day to be on 4 July 2013.

Iain then explained that the main purpose of raising this at the meeting was to gain approval from the Group and to look for the possibility of support in bridging a resource gap surrounding the organisation and co-ordination of resources.

Gill Wilde indicated that Skye Instruments would be more than happy to open their doors as part of the day, but would find it beneficial if there was some form of common branding to support anything businesses might do. Graeme Nuttall said that until the Institute was in a position to lead, his view could be that BIS would be the lead.

Andy Davies indicated that he felt that branding and a strong message was key to provide some instant recognition and that if necessary, a contribution from stakeholders could be asked for. Iain Hasdell agreed, but also suggested that an input from government alongside this would help to make the biggest impact possible.

The group agreed that plans for the day should continue, ideally with the additional resources if they can be sourced.

*Action 7: The communications workstream is to continue to develop plans for an employee ownership day on 4 July and to work on solutions on sourcing additional resources.*

On the proposed employee ownership champions, Iain again highlighted that the communications workstream is seeking approval from the group on moving forward and asking the group to propose some potential champions.

Claire Hobson passed on Rannia Leontaridi's apologies and outlined that the Cabinet Office had some concerns regarding the champion programme which have been logged with BIS and will be discussed going forward.

Janet Williamson suggested that it is important that a clear definition of employee ownership is used with the champions. The group agreed that to make the greatest impact it would be beneficial to use all forms of employee ownership.

*Action 8: BIS and communications workstream to discuss Cabinet Office concerns and present an updated proposal to Group in due course.*

## **Item 5: AOB**

There was none.

## **Date of the next Meetings**

The dates of the next meetings are on the afternoons of the 15 May and 17 July.