



# Rewarding tomorrow's values – have you got it right?

**“You reap what you sow!” says Patricia Wheatley Burt.**

**G**oodness, it's a topsy-turvy world we live in right now. Our government is burying its head in the sand while considering whether to cut public spending and/or increase our taxes for generations to come, re-paying the banks' bailout and our national debt of over £800bn. Trade Unions are demanding that spending should be cut, not jobs, and we have examples of train operators and the Post Office management teams struggling to get staff to work hours expected within pay agreements. We and our children's children will also have to provide £1-1.4trn for public sector pensions – but is this the legacy we had in mind?

Gallingly, newspapers are reporting that the young (that is to say, school children/pupils) are demanding that any adult teaching them, serving them or, indeed, parenting them should demonstrate why they should be given the youngster's respect.

And to protect this group of misplaced, arrogant youngsters, the adults (parents and friends) in driving them to and from sporting events must now be screened by the new Independent Safeguard Authority (ISA) to ensure that they are suitable to do so. It appears the Criminal Records Bureau (CRB) is not doing this adequately – so this sticky-plaster organisation has been set up at the public's expense.

## **Should we believe in the flat earth society?**

Is the world, in fact, flat and have we all fallen off the edge into some weird other land? Instead of going back to the original purpose of any arrangement, considering how effective it is, vis-à-vis public spending, taxes, pay agreements,

working hours or screening bodies, we seem to rush in a further layer of administration (and obfuscation) hoping that this time it will work. This is neither prudent, time efficient nor cost effective – it is not in any way the right approach. It all has to be paid for in the end: “These chickens do come home to roost,” (as said by the late Peter Buckley, Chairman of Caledonia Investments).

### **The Big Dipper management ride**

This Big Dipper sensation is not too dissimilar to what many of you finance directors/chief executives (and so on) are experiencing. You have had to review your service offerings over the past two years, shift the strategy, and make swingeing expense and staff cuts (although the early rounds of redundancies were really about the removal of under performers).

Now you must devise methods to retain your talented and key staff, as we slowly creep up and out from this ‘U’, ‘V’ or ‘W’ shaped recession – or risk losing them.

Recruitment consultancies report an increase in activity, curiously with more vacancies in real estate than in other areas. Those partners and staff who have kept your firm afloat over the past couple of years quite rightly believe they should have recognition and reward for this. The big question is: How?

In the cover story of the December 2008/January 2009 issue of *FD Legal*, I suggested firms should agree reduced pay, and terms and conditions to avoid redundancies. At the same time, I suggested firms should introduce a reward system that recognised the greater contribution staff in the thriving departments made, with bonuses. Psychologically people are grasping the commercial realities of how their firms operate and that jobs should not be taken for granted.

Incentivised reward mechanisms are an emotive subject as the French and other European states seek to restrict bankers’ bonuses, and while there is some sympathy for this, we cannot lose sight that well-thought through performance related pay is the most prosaic solution for the next decade, with no upper limits.

### **Making the right performance pay**

Performance related pay is challenging to set up in a law firm because of the variations in profitability of each practice area, and it is generally perceived as far too American or just plain difficult. This, however, is short-sighted, as we have achieved a shift in expectation on salaries with the door open to bonuses of some sort.

In 1999/2000, I worked with a niche City firm’s finance director on the concept of performance related pay. We developed a scheme that broadly gave, say, £25,000 of every £100,000 generated in excess of a fee-earner’s target. However, the management team were so concerned about ‘giving away’ profits, that by the time they had whittled away

all the likely risks and put in a multitude of provisos, this became £2,000 for every £100,000, which, after tax, wouldn’t have bought a decent case of wine. This initiative quickly died a death as no fee-earner would work that hard for so little recognition (and I don’t blame them) – but the firm missed a great opportunity.

The balancing act is to have a system that:

- ◆ Recognises those partners/staff who are making a real contribution;
- ◆ Rewards this contribution to profits – which will keep and motivate them;
- ◆ Manages team cohesion and solidarity towards the firm’s overall goals and values;
- ◆ Performance-manages out those employees with toxic attitudes, who don’t deliver and who make life miserable for everyone else;
- ◆ Is flexible enough to reward different staff against different measurements; and,
- ◆ Is proven, trusted and worth all the effort by increasing profits – you don’t pay out if you don’t get the results.



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### **What do you really value and will pay good money for?**

In a firm’s marketing plan there should be clarity on the sectors and services the firm wishes to operate in – what the firm values and so will consistently reward. For example, the need to:

- ◆ Attract new clients, maybe different sectors, emerging markets;
- ◆ Develop sales to existing clients (or cross selling);
- ◆ Achieve and exceed (willingly) fee income targets;
- ◆ Manage the firm/department strategically and operationally;
- ◆ Deliver high levels of service (as defined by the brand/expected by clients);
- ◆ Develop niche specialisms that reflect market needs (rather than individual whims); and,
- ◆ And so on... as well as chargeable hours and billing as standard.

“Any remuneration scheme adopted by a firm will influence the behaviour both of partners and staff,” states Anthony Barling, ex-MP of Finers Stephen Innocent. “Schemes involving merit assessment or bonuses will naturally more specifically direct the



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attention of those in the schemes to perform as the schemes require in order to achieve higher remuneration.”

**Stress-testing behaviours and measurements**

You should stress test to avoid unfairness, a lack of transparency, too much discretion or mixed messages about performance expected. But there is no one right solution. Each system has to easily answer the question: “How do I achieve a higher bonus?” If it cannot be answered, or indeed is answered differently by various partners, then it will damage relationships between management and staff.

Measuring behaviours requires an understanding of the risks associated with what happens when individuals ‘misbehave’ and how this damages profits. Typical examples include:

**Valerie**

A high-performing litigator who generates £500k revenue each year. She is, however, rude and aggressive towards her secretary and has, for the past three years, had five new secretaries each year. Re-recruitment and temporary staff costs make her much less profitable than she thinks!

**Jerome**

A fabulous divorce lawyer with wonderful high-profile clients who never bills, but if he does he never chases payment. Consequently, the firm is subsidising rich and famous divorcees...

**Performance related pay and bonus schemes – 2010 and beyond**

Once you have established the priorities, basic salaries can be capped and individuals can influence their and the firm’s future if you offer them:

- ◆ Bonuses based on firm-wide/department performance (often discretionary or bland) usually in multiples of a weeks pay rather than percentages;
- ◆ Performance related pay based on an individual’s performance, (sometimes with a team element to avoid ‘eat what you kill’ syndrome, ideally open-ended (the European Commission permitting); and,
- ◆ Long-term incentive plans (LTIPs) that smooth bonuses with maluses against a longer period of time and measurements.

LTIPs offer the greatest benefits for firms, especially for those working towards a corporate structure in readiness for 2011 (and the opportunities of the Legal Services Act 2007) as it rewards sustainable, repeatable and scalable skills and performance. These are more complex to design and there is no room here to explain how, but I believe LTIPs are the way forward.

**Consultation to develop the scheme**

Set up a working group made up of partners and staff as this speeds up the development of any scheme, encouraging everyone to think more creatively and realistically about their performance and how it impacts on the firm’s profits. Sceptics may feel concerned that this offers an open cheque book to staff – but how untrusting and almost certainly unfair. Good employees know who’s a bad employee, and they know you know who they are too...

Just as our society should be thinking about the effects of constantly applying sticky-plaster initiatives rather than getting to grips with poor performance, so good employees know that stellar performance is critical and there is no room for passengers.

You reap what you sow – so be careful what you wish for. *FDLegal*



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