PART FOUR
People and performance

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Improving profit and efficiency

4.1

Valerie Todd, Director of Talent and Resources at Crossrail and Chair of Investors in People, gives SMEs some top tips on boosting profit and efficiency through people

With the pundits agreeing that the country's economic woes are likely to ease this year, all eyes are on SMEs. These 'engines of growth' are seen as the green shoots that will spur the rest of the economy to bloom. Of course, many SMEs were driving growth through their championing of innovation and creativity long before the recession started to bite, but now may be the time to dust off the business plan and become more ambitious. To ensure that you continue to shine, take note of the following six tips, derived from the Investors in People framework and guaranteed to boost your profits and efficiency through your people.

1. Ensure a clear vision

Get together with your people to do this. Only 5 per cent of employees understand their company's vision. How motivated do you think they will be to contribute towards their organization's goals if they are unsure of what these goals are? Work with them to build a compelling vision and business plan. Ask what they think key priorities or new challenges should be, and share your thoughts with them.

You can do this by holding Q&A sessions, workshops, away days or just chatting! Creating a vision and business plan with your people will build enthusiasm, shared responsibility and common purpose, and help them align their activities and effort with the company's goals.

2. Work on strategy

Make sure you have a good strategy in place. This includes, crucially, your people strategy. You should sit down and think about how many people you need and what skills and experience are required to deliver your company's goals. Equally important is recognizing how efficiently your people are working, and any problems that are getting in the way of progress. If these problems can be fixed, go ahead; if not, make a note, go back and revise your strategy. In both cases, work with your people to find a solution.

Setting and communicating a clear vision and strategy so that you and your people know where the company is heading and what role they will be playing is key – and the more you can involve them, the better.

CASE STUDY Trinity Conferences

Jacqui Kavanagh's 23-strong team found that sitting down and planning their future strategy eventually led to sales increasing by more than 30 per cent on pre-bookings for the next two years. This is because being able to predict future scenarios and thinking about the bigger picture helped the team to become more agile, and more comfortable when responding to new situations. Jacqui believes planning to be particularly important for small companies – 'otherwise they are just too busy trying to keep the wolf from the door'.

3. Strengthen leadership

To bring the best out of your people you will need to demonstrate strong leadership. This means creating a 'strategic narrative' that they can commit to and buy into, as above. Turn your business plan into a story, with a beginning, a middle and an end. Make sure everyone knows what your story is, and where you're heading.

But keep in mind that leadership is in the detail as well as the big picture. Lead by example. If you expect your team to stay late, you should too. Make it personal and show you care about their well-being. Saying 'good morning', 'good night' and spending some time chatting about the family may seem insignificant but will make the world of difference if it ensures a happy team.

4. Focus on managers

Good leadership also involves focusing on your managers: they need consistent support. Make your expectations of them clear and provide them with the training and development they need. This is important because managers provide the link between individual behaviours and organizational goals. They are in charge of ensuring that the right people are in the right roles; goals and objectives are clearly communicated; effort is rewarded and opportunities for development are provided. Moreover, the extent to which managers listen to and value ideas will drive engagement.

Without the right leadership and management structures in place, all else will fail. Be a strong leader, and make sure you have strong managers.

CASE STUDY Geoplan

A lot of small business owners get dragged down by the fact that they never wanted to manage people in the first place. This was John Taylor's problem. He fixed it by decentralizing the business and getting away from a management structure that put everyone, but especially himself, under huge pressure. The business became increasingly self-managed and anyone could lead a project. In 2011, Geoplan made a profit of £400,000 and productivity per head went up. John credits a better understanding and implementation of leadership and management structures for this boost.

5. Engage your people

The strong correlation between engagement and the bottom line is well known, and so engagement should be at the top of your to-do list. Empowering and motivating your people by ensuring they have a strong voice is key here. You should build dialogue so that information flows around the company and all communication becomes two-way. This will allow people the chance to give feedback, raise concerns and make suggestions. Involve them in decision making – even routine day-to-day decisions about their own jobs will lend meaning to their roles within the company.

Remember that engagement is, at its core, about transforming working relationships for the mutual benefit of both employers and employees. Don't be afraid to show your people how much they are valued and needed. It will be seen as a sign of strength, not weakness.

Potential incentives

Acknowledge the role of incentives when it comes to boosting morale and engagement – it needn't be costly, and you will certainly reap the benefits. How about:

- flexible hours;
- performance-related bonuses;
- health and well-being programmes;
- proactive approaches to training;
- mentoring;
- team-building days;
- social and networking events;
- free tea and coffee.

6. Think about learning and development

Work with your people, through the management structure if necessary, to ensure that each of your employees has a development plan that contains clear, tangible objectives, along with details of how the company will support these. When people are satisfied that progress is being made towards their career objectives and they have access to learning and development (L&D) opportunities, they are more likely to have higher loyalty and commitment – creating, once again, a virtuous circle. Make the circle even more virtuous by firmly linking L&D opportunities to your business goals.

A good point to keep in mind is that an individual's development doesn't always need to equate to expensive training programmes or internal reshuffles. Employees are increasingly on the hunt for informal opportunities for growth. These can include having an internal mentor, shadowing colleagues across the company, higher-visibility assignments and more challenging tasks.

Five-step action plan for managers to drive L&D

1. Sit down with your people and ask them about:
   - what knowledge, skills and abilities are most critical to their job;
   - their short- and long-term goals – where they want to be in 3, 5 and 10 years;
   - what they think potential obstacles to meeting these goals are.
2. Set up quarterly progress meetings with your people so that you can stay updated on their goals.
3. Think about what development gaps there are within the company between current and desired skills.
4. Assess each employee's training needs and prioritize them, taking into account the company's needs.
5. Communicate and implement the final decisions.

7. Build organizational integrity

Context is everything, and organizational context is an important driver when it comes to your people's productivity and efficiency. Work to create a culture of openness and trust. People who have trust in the company will be more likely to take on challenges, voice opinions and ultimately, offer better contributions. Make recognition a part of company life. This will let your people know that their work is delivering results, and give them a clear path for expanding their abilities.

Finally – trust and recognition collude to foster integrity and pride. If your people are proud to be a part of the company, they will be happy. And if they are happy at work, they will externalize this well-being and drive performance in themselves and others, creating yet another virtuous circle which starts and ends with efficiency and profitability.

CASE STUDY 5E

Funding for not-for-profit training organization 5E dried up, and redundancies were inevitable following a shake-up in the sector. The organization managed to tackle these changes without compromising its values by ensuring a fair and honest approach throughout. As a result, the team's loyalty has been so strong that some of the people who lost their jobs carried on volunteering because they felt valued. They are due to be re-employed by 5E when it is successful in finding new funding.

For more information about how Investors in People can work for you, visit www.investorsinpeople.co.uk

The flexible employer

4.2

How do you retain workforce flexibility in tough trading conditions, asks Clare Gilroy-Scott at Goodman Derrick

In such uncertain economic times, how does the growing business safely expand its operations and recruit and retain the right staff to help it do so? Flexibility in the workforce must be a key consideration for a growing business in order for it to adapt to meet the changing demands of its operations.

There are various ways in which a business can prepare for growth while retaining the ability to contract, if required. Addressing its recruitment policy and its contractual terms with staff will be fundamental considerations, as will a flexible approach to its strategic employment policies.

This chapter will provide an overview of how the business can give itself the greatest flexibility in these ways but with minimal risk, bearing in mind, specifically, the extensive legal rights of workers and employees.

Flexibility in recruitment

Maintaining a flexible policy on recruitment is advisable if the business is cautious about expansion. Atypical working arrangements with some of the workforce can be considered, in addition to the traditional employment model. Options for flexibility include fixed-term contracts, casual workers and agency workers, all of which have their pros and cons in terms of the rights of the worker or employee.

Fixed-term contracts are generally used by businesses in situations where an individual is needed for a specific project or task, or where demand is not clear and the business wants to fill the role on a trial basis. With the change in qualifying period for bringing an unfair dismissal claim rising to two years for those engaged after 1 April 2012, fixed-term contracts are, more than ever, an attractive option for employers. However, fixed-term employees still have protection from less favourable treatment and should not be excluded from the contractual benefits and facilities offered to comparable permanent staff. In addition, the use of one fixed-term contract after another will mean that such employees accumulate two years' continuity of service to give them protection from unfair dismissal, which could invalidate the original purpose behind the fixed term. In effect, a fixed-term contract is only a valid flexible solution for up to two years.

Another option is to engage 'casual' employees until the business has a real sense of its requirements. The essence of the relationship with a true casual worker is the lack of what is called a 'mutuality of obligation' between their engagements, that is, there is no obligation on the employer to offer them work and no obligation on the worker to accept it. If utilizing this option, the business should ensure that the informal arrangement does not become regular and predictable, and avoid any suggestion, between engagements, of any mutuality of obligation. This could allow continuity of employment to build up between engagements and give the 'casual' employee unfair dismissal and other employment rights which rely on a qualifying period of employment.

Agency workers, who can be engaged on a short-term or an open-ended basis, are another flexible staffing option. The true agency worker will not be an employee of either the agency or the hiring business and rights such as unfair dismissal will not be applicable. However, agency workers do have rights applicable to 'workers', including the right to the national minimum wage and paid annual leave, as well as protection from discrimination, among others. In addition, new rights for agency workers were introduced in October 2011; these include the right to the same pay and other basic working conditions as equivalent permanent staff (after a 12-week qualifying period), access to collective facilities, such as canteen, child-care or travel services, and information about employment vacancies (from the first day of the assignment).

The key with each method of engaging staff is to ensure that the wording of the contract reflects the manner of the engagement and that this is consistent with what happens in practice.

Flexibility in contractual terms

Given that business requirements are subject to change, how can the business ensure that it has the flexibility to require staff to work additional hours, carry out other duties, travel on business or work from another location, as may be required? The answer is in the careful drafting of its contractual terms with staff. Without flexible contractual clauses, any change from what has been agreed with the worker may amount to a breach of contract and/or result in a claim for what is known as 'constructive' unfair dismissal.

Although it is sensible to include a contractual clause which expressly says that the employer has the right to change contract terms, it is still a legal requirement that the employer notifies employees of the change in writing at the earliest opportunity and no later than four weeks after the change. More fundamentally, some key terms, such as pay and hours of work, cannot be altered by an employer without the agreement of the employee. However, by retaining some discretion to alter terms in the contract and by following a fair and reasonable procedure to obtain agreement to any such change, the employer will have gone some way towards being able to make any necessary changes safely.

Bonus, benefits and other reward schemes are often essential to attract the highest calibre of worker, but these can be termed as non-contractual and discretionary to permit change as the business evolves. Careful drafting, again, is essential.

Flexibility in policies

Key strategic employment policies in this economic climate must be those relating to restructuring and performance. 'Redundancy' and 'capability' are both potentially fair reasons for dismissal. A further potential fair reason is 'some other substantial reason of a kind such as to justify the dismissal of an employee holding the position which that employee held'. This could encompass dismissals as a result of business restructuring or because employees fail to agree to changes to contractual terms. If a dismissal for one of these reasons is identified, it is essential that the employer follows a fair and reasonable procedure, to minimize risk of claims.

A policy on restructuring need not be written down, but a prudent business, even while growing, will regularly review its operational structure and consider whether job roles and incumbents are suitable, capable and at the right level, to ensure that the demands of the business are being met appropriately by its workforce.

When restructuring, a fair and reasonable procedure will involve the employer's consideration of all the options (with clear evidence of initial preparation); notification and consultation with affected employees prior to any firm decision being made by the business; and the consideration and application of objective selection criteria. If redundancy is possible, the business might consider 'bumping' a potentially redundant employee into the role of a less capable employee who is not at risk, thereby making that employee redundant instead. In addition, an employer must always consider suitable alternative employment for any potentially redundant employee.

With capability issues, employers are often concerned that formal performance-monitoring procedures can seem heavy handed and they worry about the effect on workforce morale. However, this standpoint overlooks the fact that many hard-working employees do not like to support those whom they see as failing to pull their weight, which can be equally damaging to the business.

'Capability' as a fair reason for dismissal is assessed by reference to skill, aptitude, health or any other physical or mental quality. This can include intransigent, inflexible or difficult workers whose shortcomings affect performance and efficiency, or relations with clients and customers, as well as employees who fail to reach the employer's standards and/or targets. The employer will need to be able to demonstrate what steps it took at the very start to minimize the risk of poor performance and to create conditions that would allow its employees to carry out their duties satisfactorily. However, health issues need to be addressed very carefully and legal advice ought to be taken first to avoid the various risks of resulting claims.

Clear policies on training, support and supervision are essential, particularly when promoting staff from within the organization, to encourage retention of quality staff. Employers will also need to think about their systems for assessing performance, perhaps by means of an appraisal system and targets, so that clear evidence of poor performance will be accessible and to ensure consistency of treatment.

A proper performance management process should include the following basic steps: an investigation and appraisal of the individual's performance; warning of the consequences of failing to improve; and providing the individual with a reasonable opportunity to improve. If the business believes that it may eventually dismiss an

individual because of poor performance, it must also follow the ACAS Code of Practice on Disciplinary and Grievance Procedures, as a minimum.

Having successful policies on staff structure and performance will mean that issues can be identified and addressed at an early stage. This, along with a flexible approach to recruitment and well-drafted contracts, will give employers the greatest possible flexibility to deal with evolving business requirements.

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Talent for SMEs

4.3

Access skills and expertise from a university as required? Anne Milligan at The University of Manchester explains how careers offices are ready to put the right candidates in place for you

There was a time when small business owners believed that universities had little to offer them in terms of developing their business. In the past, universities have been better known for their work with corporates, helping them to recruit large numbers of graduates through the 'milkround' system.

Much has changed over the past 10 years; universities have become more responsive to business needs, especially to those of small businesses, and are 'open for business' all year round, not just during term times. They have also become more aware of their local and regional marketplace as a source of opportunities for their students and graduates. This is added to by the fact that in some localities, such as Manchester, a higher proportion of graduates wish to remain in the city once they have graduated, creating an increased demand for local opportunities to get graduates started on their career path. Such opportunities are therefore more likely to be within the small business community. While getting a place on a graduate training scheme continues to be the ultimate goal for many final-year students, there is also a growth in demand for opportunities outside the graduate schemes for those seeking a career that will often give them greater responsibility much earlier on or perhaps a greater work–life balance – a factor which is becoming increasingly important to today's graduates.

Accessing talent

As the saying goes, 'people buy people'. Everyone knows that a successful business is as much about the people that make it happen as the product or service that it sells. Everyone also knows that reaching the right people at the right time can be time-consuming and expensive.

The majority of universities provide a year-round, free vacancy advertising service. Plus they can respond to immediate hire requests and are more than happy to provide advice and guidance to small business recruiters on how to create a pipeline to access student and graduate talent, ensuring that the right level of skill and expertise is targeted. Hence recruitment can be fairly inexpensive and less time-consuming.

Having made the decision to recruit via their local university, what many struggle with is how to get in, who is the right person to speak to? While over the years

universities have become more business friendly and actively seek interaction, there is still a long way to go to make it easy for businesses.

Most universities will have a business engagement or business development team, normally dedicated to developing knowledge transfer or research proposals with businesses. However, it is traditionally the university's Careers Service that carries the mantle of working with businesses seeking to recruit. Discard old images of seeing a school careers adviser at the age of 12 for a 15-minute discussion about becoming a bus driver or an accountant; careers services in universities are much more sophisticated. Often responsible for organizing huge exhibition-like careers fairs and hundreds of on-campus presentations and workshops, careers services also provide recruitment services to a whole range of organizations – including small businesses. Type in 'careers' into any university's search box on its home page and you should find your way there. Careers-based employer liaison staff will understand the challenges faced by small businesses, often unable to plan or anticipate recruitment needs. Vacancies can be advertised at any time of the year, with advice being provided on likely applicant responses accordingly.

Today's students do not differ too much from days of old; they still look for part-time work to earn while they learn. The emphasis nowadays is to help pay fees and get that all-important work experience for their CV and enhance their employability skills as much as for liquid refreshments. Similarly, graduates are still looking for a great job to start their career – but often have other plans and hence will look for more flexible options. This could be to get a short internship or work experience before they go travelling or decide to undertake further study, for example.

So, what are the options for a small business considering accessing student talent from its local university?

- **For part-time work**: Students can work up to a maximum of 15 hours during term time and often look for work that will develop their skills by undertaking customer service or administration roles, subject-specific work such as marketing as well as the traditional bar work and waiting. They would expect to be paid at least the minimum wage and normally are quite flexible in terms of when they work; weekends and evening work are options.
- **Vacation work**: Most students will want to undertake some kind of work during their summer vacation when they can work full-time. Hence for a period of around three months they can be employed in project work, cover for staff absences or provide holiday cover.
- **Placements or a 'sandwich' year**: A wide variety of degree courses in business, science and engineering subjects include a one-year placement. The year will be the third of a four-year course, running from summer to summer, providing an excellent opportunity for a student to get some real-life work experience. For businesses it acts as a one-year interview period and while it is a salaried year, it tends to be at a lower rate than recruiting a graduate, providing a cost-effective way to spot talent and bring new skills or insights into the organization. A placement year is ideal for roles that need a bright spark to deliver but really only has a one-year lifespan before it becomes too routine. As the student will often be required to undertake some academic work while

on placement, this often presents a project opportunity for the company in addition to the delivery of the role. Roles that fit quite well into this model include anything that will be an assistant, for example a Marketing assistant, HR assistant, Operations assistant and so on. One thing to bear in mind is that these students will just have two years' study behind them, so their subject knowledge will not be quite as deep as you would expect from a new graduate.

Most students will have engaged in at least one of the above activities and will be relatively work-ready as they enter the graduate market. Your graduate recruitment options are:

- **Graduate recruitment**: Businesses recruiting a graduate are usually seeking to fill a full-time, permanent or longer-term position requiring the incumbent to have a more in-depth knowledge of their subject, possibly with exemptions from professional exams (ICAEW ACA, CIMA, CIPD, CIM, CIPS etc) too. Some graduates may come with placement-year experience (as indicated above) and hence are even more commercially focused. The range of degree courses is so wide that recruiters are encouraged to look beyond the degree subject at the graduate's work experience and their transferable skills rather than focus on the topic of the degree – unless of course you are recruiting an accountant or engineer! The graduate's Higher Education Record of Achievement (HEAR) will help with this.
- **Internships**: This is a term that is now more widely used in the UK but many recruiters are still unsure what it means. Generally it encompasses a short spell of paid work experience, usually as a new graduate. The length of an internship can vary greatly from a few weeks through to a whole year. Internships present another way for businesses to 'try before you buy' and are ideal for those unused to recruiting graduates or just need some extra resource for a short spell. Internships are another cost-effective way of getting graduate-level skills into a small business as salaries are often below the usual starting salaries for graduates.

And more ways to access talent:

- **Course projects**: The inclusion of a live case study or project can be a feature of some degree courses and, for businesses providing the topic, little or no financial outlay. Examples include Master's-level students undertaking strategically focused research during their summer vacation through to history students planning a marketing campaign for a charity over a six-week period as part of their careers module. This is a useful option for businesses if projects are not mission-critical as they will occur at specific times in the academic timetable, but the element of choice means there is a chance that your project might not get chosen.
- **MBA consultancy projects**: The opportunity to get MBA-level skills and expertise into your business is often attractive but will usually come with a cost attached. Again, these projects will need to happen at specific times of the year to fit with academic requirements, but may be worth investigating if you have some strategic issues that need addressing, new markets to research or are

looking for some fresh thinking on old problems. Approach your local business school, identify the MBA course leader (normally found on the website) and drop them a line – they would be pleased to hear from you.

Therefore there are a variety of ways that small businesses can access talent from universities at whatever time of the year the need arises. The best starting point is to approach your local university's Careers Service, especially anyone in an employer liaison role. They'll be happy to work with you, will help you define your needs, give you advice on the most appropriate service or route to recruit and there will be a free vacancy advertising service that you can use.

Anne Milligan leads the small business team in the Careers and Employability Division at The University of Manchester, one of the universities in the UK most targeted by graduate recruiters. The Careers and Employability Division assists thousands of recruiters every year in their search for student and graduate talent, a large proportion of which are small businesses who can access an experienced and dedicated team of SME recruitment advisers. Tel: 0161 275 4041; e-mail: anne.milligan@manchester.ac.uk; website: www.manchester.ac.uk/careers

Employee rewards

4.4

Andrew Walker at Croner discusses the processes for setting and managing salaries in a growing company

There are many challenges that small companies face every day and although not necessarily the most obvious, or even the most seemingly pressing, managing the reward of all employees is just one such challenge.

For many larger private sector businesses, the ability to position themselves as an 'employer of choice' or to 'win the war for talent' is a vital part of their employer brand. In turn that brand strength can give a little more flexibility in how reward mechanisms are created and delivered; allied to this, the sheer attraction for many employees of being part of a large, hopefully stable and successful business can be enough to guarantee that these businesses have a ready source of willing candidates, both internal and external, to ensure that the future is bright.

Somewhat paradoxically, and at the other end of the spectrum, many charitable organizations benefit from the desire of existing and prospective employees to align themselves with a cause and to some degree this offsets the need to feel that reward plays a major part in the 'contract' between employer and employee. While there is evidently a need for employees to be fairly paid for their work, there is often less focus on the more creative or generous forms of reward that can exist in the commercial sector.

What then of the small, growing business? These are often not able to offer the kind of creative and often very attractive rewards associated with large businesses; neither are they (or their staff) charity cases.

Before we tackle the question itself, it seems sensible to consider the concept of reward in its broadest sense; if we think about what reward is designed to achieve and how it supports a business, we can start to apply some of that thinking to the growing/entrepreneurial business.

What is reward?

So first, in a very direct way, I want to try to encapsulate the difficulty we all face in attempting to define this topic. What do we mean by reward?

As a starting point, let's consider what an employer is trying to achieve with any form or reward. Usually, at its most basic level, any form of reward is designed to aid the employer in recruiting and retaining the key skills needed to deliver the overall purpose of the organization.

To do this, the reward mechanisms need to ensure that they respond both to the requisite skills themselves and also to the outputs or contribution that these skills make when exercised correctly. In simple terms, all employers use reward to value the skills they need to get the job done.

At a very simple level, therefore, an employer is defining what skills it would like its employees to have (competencies are an example of this), defining how it would like these skills to be used (here we are looking at objectives) and then making a statement about what the employee can expect in return for using the skills to deliver the outputs.

Implicitly, there is of course always an underlying statement that an employer does not expect to deliver its half of the bargain if the employee falls short of achieving their commitments.

Now this is something of a broad-brush description; of course, employers will bring into their organization people who don't have all of the skills and then help develop these to underpin their own overall needs. As an example, this is something we see often in the charity world, where this is a fairly common mechanism for balancing cost management while delivering the organizational outputs.

Likewise, most employers will help existing staff who have the requisite basic skills to complete a job but who then might need some support to deliver the required outputs or to step up into a new role.

This kind of development and support will not just focus necessarily on the hard skills needed to do a particular job. Plenty of employers now realize the value of developing the right behaviours as much as ensuring that people have the right technical skill set.

But overall, the process of reward is one whereby the employer and employees enter into an agreement, a kind of implicit contract which focuses on the following areas:

- The employer seeks to recruit and retain employees with the right skills and/or abilities.
- The employer then invests either time, money or both into ensuring that the employee continues to have the right skills and the employee commits to using these skills to deliver the required outputs.
- The right objectives are agreed; these are ones where the employer clearly articulates what objectives it is striving to meet and the employee in return makes commitments on what they will contribute in order to do their part in achieving these goals.
- Those employers who are really tuned in to this process also at this point help the employee understand not just *what* is required, but *how* the objectives can be met. This can be done by setting standards, or giving examples of how a particular task or activity will contribute to the end result. Many employers simply fail to give enough time to this part of the process, meaning that employees know what is required but don't have a clear picture of how to get there.
- Finally, assuming that the employee delivers, then they should have a clear picture of what they can expect by way of reward – whether in the form of cash or not.

Up to this point, the process can be broadly the same irrespective of the size and type of organization concerned. If you are a leader in any sector, the basic principles of setting a course and then supporting your team to achieve this are much the same.

But what if you run a small, growing business? How do you get the best out of these mechanisms?

The growing company

Well, in truth, the basics described above don't really change. The key differentiators between an established business and a growing business centre around the timings of when and how reward is managed.

Whereas larger, established businesses have defined mechanisms, structures and pay policies, in a growing company these niceties might have to be somewhat more relaxed to give flexibility at both the recruitment and the day-to-day management stages. A word of caution, though: don't forget that there are some statutory obligations that an employer has in relation to paying staff and these must not be put aside under any circumstances.

But as a general example of how the above works in a growing business, when seeking to appoint a new addition to your team, finances might dictate that the starting salary is perhaps not up to the full market rate; in exchange, though, today's new starter might be tomorrow's manager or even director so it's clear that there may be a consequential trade-off between today's pay and tomorrow's opportunity. To put it bluntly, an element of 'jam tomorrow' might be perfectly appropriate.

And one last thing to bear in mind: in all of the above, communication is so vital, never more so than in the small, fast-moving, tightly knit and focused team which is so often the most striking feature of growing, entrepreneurial businesses.

Andrew Walker, Head of Business Development at Croner, has 20+ years' experience in human resources consulting, the last 15 of which have been in the pay and benefits field. Having worked for both 'boutique' and blue-chip organizations across a range of HR disciplines, Andrew has a very broad-based background on which to draw. Because of his background in pay and benefits Andrew also works closely with the team in Croner's reward business in the UK.

Andrew is an accomplished public speaker and has presented at Institute of Directors (IoD) and Confederation of British Industry (CBI) conferences on a variety of executive and non-executive remuneration topics. He has been a member of the judging panel for the Corporate Research Foundation (CRF) publication 'Britain's Top Employers' since 2005. Further details: tel: 01455 897194 e-mail: Andrew.walker@wolterskluwer.co.uk

Managing pension scheme risk: a guide to trustee liability insurance

Trustees have an increasingly difficult job to do. The Pensions Act 2004 increased the legislative burden on trustees, giving the Regulator wide-ranging powers if schemes are not being managed appropriately, and various Codes of Practice have also been issued by the Regulator. As can be seen, therefore, the responsibilities of a trustee are onerous; this is also borne out by claims experience which demonstrates that errors can occur even in the best managed schemes, particularly in the increasingly dominant environment of defined contribution schemes.

The issue of protecting trustees from liabilities has also become particularly topical following the various headlines reporting the liability of trustees, including the cases involving the incorrect authorization of unsecured loans to sponsoring employers. As intended, the Pensions Ombudsman's Office does provide members with an easily accessible forum to pursue any disputes.

Liability for breach of trust is a personal liability and a trustee is liable to both the scheme beneficiaries and the scheme creditors. A trustee is liable on a joint and several basis, which means that a trustee can be liable for a breach of trust committed by another trustee. Professional advice should be sought when appropriate, and failure to do so may in itself be held to be a breach of trust. If trustees are uncertain as to how to exercise their powers, they can also apply to the court for directions. The risk is potentially greater after a winding up, where there may be missing beneficiaries or other contingent liabilities and no assets. A trustee or trustee director is also potentially at risk of having to pay a civil fine for breach of pensions legislation. Fines for individuals range up to £5,000 and for corporate trustees £50,000. However, it should be appreciated that even in the event that a trustee is not personally liable, there may be potential losses to the scheme itself as a result of the decisions taken.

Limited protection: exoneration and indemnity clauses

Many trustees will have the benefit of clauses within the trust deed and rules exonerating them from liability, and, in many instances, an indemnity may be given by the scheme or the sponsoring employer company. However, it is not always appreciated that such clauses are subject to

statutory limits. For example, an exoneration or indemnity from the fund cannot operate for any breach of trust relating to investments and it is also prohibited for the scheme to indemnify trustees for civil fines and penalties. It should also be appreciated that an indemnity from the employer would be of no value upon an insolvency when the trustees are still having to manage the scheme.

Exoneration clauses are also subject to several other limitations, including not affording protection from claims involving third parties, and they will always be construed restrictively by the courts. In addition, the problem with relying purely on exoneration and indemnity provisions is that they merely transfer any liability between the trustees, the beneficiaries and the employer. More importantly, why should a pension member, who has a valid claim, be defeated by a legal technicality, ie an exoneration clause? In today's environment, trustees do not usually wish to 'hide' behind exoneration clauses when facing such claims.

Wider protection: insurance

In these circumstances, insurance is playing an increasingly important role in protecting trustees and pension scheme assets. It provides an external resource of protection and should stand in front of such indemnity and exoneration clauses. The purchase of a properly drafted and comprehensive insurance policy can be a cost-effective means of protecting members' benefits, individual trustees, the sponsoring employer, pension managers and internal administrators from losses resulting from claims, be they well founded or not. The extent of cover varies from policy to policy and should be reviewed carefully, as subtle differences in policy wording can limit the cover available. For example, some insurers do not cover the scheme for its loss where the trustees are exonerated from their breach of trust; also, the definition of 'wrongful act' in policies can appear very similar but can vary widely in the scope of cover provided. However, it is not always appreciated that these types of insurance policies operate on a 'claims made' basis. This means that the insurer will indemnify for any claim falling within the scope of the policy which is made against the insured during the policy period – usually 12 months – irrespective of when the event giving rise to the claim occurred. It is important to note, however, that an insurer will always review carefully, in these circumstances, whether there was full disclosure either on original inception of the policy or upon renewal.

If the decision is taken to adopt insurance, however, it is important to have a policy specifically designed to respond to the needs of trustees and other individuals involved in the management of pensions. This is highlighted by the potential conflicts of interest which commonly exist when a trustee is also a director of the sponsoring employer company, with duties to the company and its shareholders. As a trustee, however, there is an overriding duty owed to the scheme beneficiaries, which is paramount. Accordingly, it is not recommended that reliance be placed upon a Directors and Officers (D&O) policy of insurance as the cover will not be tailored to meet the specialized circumstances relating to pensions and potentially there will be competing calls on the policy. Furthermore, D&O policies will often contain an exclusion for any acts or omissions while acting as a trustee or administrator of the pension scheme.

Retired trustees

A trustee's personal exposure does not cease when they retire and their post-retirement situation may make them particularly vulnerable. Problems in pensions often take a considerable time after the event to materialize. In pensions, the limitation period of 6 years is not necessarily the norm and in some cases may be 12 or even 15 years. Also, the time period may not start running until the facts upon which a claim is based have been identified or, for example, from the date of a member's retirement. In general, the Pension Ombudsman's jurisdiction is limited to claims arising in the last three years, although there is no restriction to the Ombudsman taking a claim relating to a much earlier period, as has happened in several instances. A claimant may also attempt to identify a subsequent failure to remedy a deficiency which, if successful, would restart the limitation period from the date of that subsequent failure. Accordingly, there may be difficulties in defending a claim solely on the grounds of limitation.

It is important, therefore, to check that the position of retired trustees and pension managers is properly protected. The solution is for trustees who retire before the end of the policy period to have the guarantee of cover in the event that the scheme ceases to be insured. They can then rest assured that they have cover personal to them, irrespective of what the employer or trustees have done, or not done, about insurance since they retired. It is again important to check the extent of cover provided in this respect as policies do vary: from lifetime at one extreme to 12 months at the other. (OPDU Elite provides lifetime cover from the date of expiry of the main policy of insurance, thus giving valuable peace of mind.)

What should be covered?

The following is a guide to the main headings of cover which can be included:

Errors and omissions
Damages, judgements, settlements
Regulatory civil fines and penalties
Ombudsman awards
Defence costs
Full severability of cover
Individual representation
Maladministration
Public relation expenses
Extradition proceedings/bail bond costs
Prosecution costs
Employer indemnities
Exonerated losses
Litigation costs
Retirement cover – lifetime
Costs re investigations by regulatory authorities
Media & arbitration
Court application costs
Third-party provider pursuit costs
Emergency costs

Court applications

Trustees and pension schemes can also incur significant legal expense in going to court to seek directions or if they are joined by another party who is seeking the court's directions. Insurance can be obtained to cover these expenses, which do not necessarily involve a legal liability upon

the trustees, but the scheme will usually be responsible for the legal expenses of all the parties involved. There have been several high-profile cases involving costs in excess of £1 million which have had to be met from pension scheme funds. (OPDU Elite provides an extension to reimburse such costs – it is important to note that this type of legal expense would not usually fall within the scope of 'defence costs' as defined in many insurance policies.)

Wind up

Separate discontinuance and 'run off' policies of insurance can be purchased to protect trustees once a scheme has wound up. Cover can be provided to protect trustees against loss for liability or defence costs arising from breaches of trust while the scheme was ongoing. Another relevant consideration is that there may be missing or overlooked beneficiaries who surface when all the assets of the scheme have been distributed.

Claims experience

OPDU's own claims experience has seen issues which have involved individual claim sums of up to £20 million to date. One common feature is, as one would anticipate, the importance of the accuracy of data and we encourage trustees therefore to ensure that regular data health checks are undertaken. Other issues which have given rise to problems and potential liabilities include: incorrect formulas used for calculating benefits; interpretation of Trust Deeds; overpayment of benefits; misapplication of Scheme Rules; seeking court directions; early retirement and ill-health disputes; rectification proceedings; accounting irregularities; DC choices of investment funds; Pension Sharing Orders; general administration errors; Transfer of Undertakings (Protection of Employment) (TUPE) issues; misrepresentations by trustees; transfer values; incorrect quotations; discrepancies between scheme documentation and administration practice; delays in transfer and payments of benefit assets; and Pension Protection Fund (PPF) levy issues.

In particular, we are seeing an increase in matters relating to investment issues. As noted above, it is not possible for a scheme's rules to excuse a trustee from personal liability in respect of the discharge of their investment duties. Importantly, investment issues for pension schemes have become much more complex and diverse. Classes of assets have widened and investment strategies have become more intricate, with trustees making decisions relating to matters such as hedges, swaps and buy-ins. These factors have increased the potential for claims.

In addition, the conversion from defined benefit schemes to defined contribution schemes has also continued. This has generally meant potentially lower benefits under new schemes, which has also given rise to closer scrutiny from members and trade unions with more issues arising for trustees to deal with as a result.

Cost

The cost of trustee liability insurance varies according to the size of the scheme but is also dependent on several other factors. However, the cost starts at a few thousand pounds for a small scheme and it should be easy obtain an approximate indication of cost for any size of scheme without having to complete a full application.

Conclusion

By taking out insurance, trustees can be confident that they have protection against the liabilities that might arise in performing their duties while also giving members comfort that their interests are being looked after properly in preserving the fund assets, which is particularly important today when deficits are common.

Jonathan Bull is Executive Director of the Occupational Pensions Defence Union (OPDU). He helped establish OPDU in 1997 with the assistance of a group of independent professionals and representatives from pension schemes. OPDU protects pension funds by providing unique insurance cover and services to trustees and sponsoring employers for their liabilities. OPDU is managed by Thomas Miller & Co Ltd (specialist providers of insurance and risk management services since 1885). Jonathan is a lawyer with 30 years' experience in insurance; a member of the Law Society, PMI, PRAG, NAPF and a trustee of the Pensions Archive Trust; a frequent conference speaker and contributor to pension journals. Pension schemes holding total combined assets in excess of £180 billion have joined OPDU. Further details: e-mail: Jonathan.bull@opdu.com; website: www.opdu.com