

It's time to share the wealth

Giving stock options to company staff is less popular here than in the US, but that may be about to change, writes Gareth Naughton

When Facebook launched on the stock market in 2012, it not only made Mark Zuckerberg one of the richest twentysomethings on the planet, but many of the company's employees got a piece of the pie as well. Rewarding staff with stock options is popular with start-ups in the US, but it is infrequently used in Ireland, where the legal environment is less favourable.

This situation may be about to change, however, following last month's publication of the Entrepreneurship Forum's report. Among the report's 69 recommendations were two aimed specifically at making it easier for companies to set up an Employee Stock Option Programme (ESOP) and more attractive for employees to participate.

Sean O'Sullivan, chairman of the Entrepreneurship Forum and managing director of SOS Ventures, believes that part of the problem facing EPOS uptake is that Irish companies have a culture of rewarding employees in other ways.

"In the US, there is a wide awareness of, and appreciation for, the benefits of stock options and how that gives a chance for the whole team – not just the co-founders or the senior management – to really participate in the growth of a successful company," said O'Sullivan.

"Obviously, there is an awareness of that in Ireland as well and there are many different forms of compensation – bonus plans, for example, in the high tech sector, which are done pretty rarely in the US

are commonplace here.

"There are certainly other ways of compensating people, but what I like about the approach of stock options is that it really does say: 'We are in it together, we are in it for the long haul and we are building something that is significant'. By sharing the wealth on an exit event or on an IPO event, that really gives everyone some skin in the game," he said.

Required changes

To facilitate this shift, however, significant changes will be needed to the rules governing the setting up and administration of ESOPs in Ireland. Typically a company – particularly start-ups – have to set up a separate company to manage their ESOP, increasing the costs and administrative burden they face.

This is because the rules as they stand require a company to have positive retained earnings before it can buy back shares. Designed to prevent the dilution of share value, the measure has had the unintended consequence of putting companies off thanks to the red tape involved.

"It is expensive, time-consuming and convoluted to set up a stock option programme here," said O'Sullivan. "It is difficult enough setting up, running and maintaining and submitting the annual accounts for one company, but to have to do it just for an employee benefit plan is something that most people are just not going to be motivated enough to do".

Staff equity

Employees in receipt of the shares are also required to pay their tax liability up front, re-



Entrepreneur Sean O'Sullivan with Minister for Jobs Richard Bruton at the launch of the Entrepreneurship Forum report
Picture: Colm Mahady



gardless of whether they have the opportunity to cash them in. Niall Kavanagh, executive council member of the Irish ProShare Association, said it was in this area that ESOPs lost their shine for many start-ups.

"If you are starting up a new company, basing it around IT, you are going to lose your key employees to people like Google, Facebook and LinkedIn because they have, effectively, unlimited pockets. The only thing that you have in your arsenal that might allow you to hang on to those key staff members that you need is to offer them equity in the business," said Niall.

"However, if you do that and that equity then vests, they have to fund the tax liability on that. You are asking them to pay a tax on an asset that cannot be liberated so unless they can find someone who can lend them the money for that tax, they are in trouble. The whole system breaks down when you cannot offer equity because nobody can pay

the tax, then they will move off to Google very quickly and you are in trouble."

One of the benefits of employee share ownership – and this is particularly true in Ireland, where the vast majority of businesses are privately-owned – is that it can get businesses get beyond the hurdle of poor succession planning.

"Employee ownership is one way to hand a business over to the employees who are running it and, in the same way, achieve a better value for the business. If you want to sell a business – particularly a family business, because you may not be in a position to float that on the stock exchange – your only choice is to sell to a competitor and that brings down the price," said Kavanagh.

Recommendations

The Entrepreneurship Forum made two recommendations in the ESOP:

- Enabling employee stock

ownership without creating taxable events until the timing of sale of the stock and

■ Enabling companies to re-purchase share options from departing employees without requiring positive retained earnings.

While the tax proposal may cause some difficulties given the current economic climate, the second recommendation could be implemented by including an employee exemption in the regulations.

Making it easier for more people to partake in ESOPs would have huge benefits down the road, O'Sullivan maintained.

"The more people who get the benefit of stock options, the more we will create that positive spiral where someone makes money and they have a nest egg that they can start their own company with, which will lead to a more entrepreneurial society," he said.

"It is like a flower that generates one seed in its whole life. Is it going to replicate?"

No. We need to generate a thousand seeds from every flower. By having a working, viable stock option system in the Irish eco-system, then we are encouraging a flourishing of entrepreneurial activity."

Policy statement

The Department of Jobs, Enterprise and Innovation said that Minister for Enterprise Richard Bruton planned to follow up the Entrepreneurship Forum's recommendations with the relevant departments.

"Many of the recommendations contained in the report will be implemented as part of the Action Plan for Jobs process," a spokesperson for the department said.

"Minister Bruton, in consultation with colleagues, will prepare the first ever Government Entrepreneurship Policy Statement for agreement by government and publication shortly. This policy statement will contain a set of cross-governmental targeted actions to

drive improvements in the overall environment for entrepreneurship," a spokesman said.

Kavanagh said the implementation of the forum's two ESOP-related recommendations would represent a big leap forward in the field.

"From the IPISA's perspective, we are not saying that you get away with not paying your taxes – everybody needs to pay their tax – but it is a question of whether we are cutting our nose off to spite our face by insisting on the tax being paid now," he said.

"The reality of that is that the system breaks down and you don't get the tax in the future. We need to be cleverer about it. You don't need an economics degree to know that getting something in the future is better than getting nothing now. Equities are risky, and you do need to take a punt on them. If the entrepreneurs are in there taking a punt, as a society, we need to do the same."

Enough to go around

Some of Ireland's highest-profile companies give their employees a slice of the pie.

Facebook

One of the biggest initial public offerings in the technology sector, Facebook's launch on the stock market made billionaires of Mark Zuckerberg and Sean Parker, but thousands of the company's employees also benefited. At one point it was estimated that the Facebook IPO would create 1,000 instant millionaires, on paper at least, prior to its launch in May 2012, but many more saw their wealth jump by six-figure sums.

Ryanair

The budget airline plans to introduce an employee share option scheme aimed at senior staff and directors. It said the programme would be used to reward, retain and incentivise key employees; and with the shares not set to vest for a set period, would ensure staff stayed on board.

Tesco

Share schemes are not just for senior management. Tesco employees can join the retailer's Save as You Earn scheme after a year's service, paying in at weekly or monthly intervals for three to five years. At the end of the scheme, they can buy shares at the price set when they began saving or get their money back with interest.

Working Week

Jeff Power has been Paddy Power's customer experience manager since February 2012. Founded in 1988, Paddy Power is a multi-channel betting and gaming group. The company employs 4,500 people and has operations in Ireland, Britain, Italy and Canada. It will be one of the companies recruiting to fill 500 contact centre roles at the Contact Centre Management Association's Jobs Fair taking place this Thursday in Dublin's Ballsbridge Hotel.

What are the main responsibilities of your job?
I'm responsible for customer support. We provide support for Paddy Power.com and Dialabot over the phone, by chat and email as well as on social media. This includes

customer support training and development as well as our customer support and responsible gaming operations. We get requests from thousands of customer contacts every day, ranging from queries on price to bets and account information.

What are your professional motivators?

Achieving results. We put the customer at the centre of everything we do. I try to translate this into my day-to-day work by measuring customer satisfaction, anticipating customer demand, and identifying efficiencies along the way. It's all about achieving results – which, in my case, is great as it marries the highly measured contact centre environment to the competitive spirit at Paddy Power.

How would you describe your work style?

I'm collaborative. I learn from the experiences of the people around me, and then come up with the best approach as a team.

What is the most valuable professional lesson you have learned?

Act fast and never panic. Unforeseen challenges come up in any operations environment. Things happen out of the blue. I have lots of experience reacting to situations in a way that addresses the issue, without the wasted time and energy that panicking brings.

Who do you most admire in Irish business?

My friend Declan Clarke runs a frozen yogurt busi-



Jeff Power: would like to run his own business some day

ness called Mooch. I admire him for the courage he has shown in starting up his own business. Anyone who has the determination and resilience to sell frozen yogurt to Irish people in a recession, and in this weather, has to be admired.

What is the most valuable career advice you can offer others?

Ask questions, listen to the answers and learn from them. That's how we understand customer needs and it can be applied to all parts and all levels of a business.

In terms of doing business in Ireland, what do you think is the biggest challenge we face?

The challenge of delivering the best possible customer experience.

What is your ultimate professional goal at this point?

I would like to work for myself in some way, shape or form. I'm waiting on divine inspiration to find out how best to go about it. Until that happens, I'll continue having fun in Paddy Power.

For more info on the Contact Centre Management Association's Jobs Fair, see ccma.ie

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■ John O'Keefe is Nitro's new vice-president, EMEA. He joins from Salesforce.com, where he spent three years as vice-president for small to medium business in Europe. Before that, he was Salesforce.com regional sales VP for Britain and Ireland for two and a half years.



■ Zurich Insurance has promoted Lorcan Harding to the role of director of sales and distribution. Harding has been a broker manager with the company for the past six years, having already spent eight years in the role of sales manager.



■ Trilogy Technologies has appointed a new customer service manager with responsibility for customer service desk. Phil Somers joins from Origin Enterprises where she was service desk manager for six years. She was also formerly system administrator at IAWS Group.



■ Aiden O'Byrne has joined DoneDeal as manager, Commercial Partnerships. Byrne was formerly strategy and sales director with Electric Media for close to six years. Before that, he founded and ran www.popenation.com for two years.

People Problems

The various routes to employment dispute resolution

When people take a grievance or complaint to different adjudication bodies, they are sometimes accused of "forum shopping". In the area of employment relations, however, this is a common occurrence, especially where someone feels that their employment rights, or their right to equality, has been violated.

In this instance, the employer faces a "double jeopardy" threat. Even if a complaint fails on, for example, the grounds of unfair dismissal, it may be upheld on other grounds – for example, equality discrimination at an Equality Tribunal hearing.

Employment law, however, dictates that substantive



Gerald Flynn

cases be considered by just one body or forum, a requirement that came to the fore at an Employment Appeals Tribunal (EAT) hearing in Cavan Town.

Cavan's Astrid McCarey completed her maternity leave and returned to work in the Cootehill-based chartered accountancy practice Hugh Lennon & Associates.

McCarey, who had taken maternity leave three years previously, claimed that upon returning from her second maternity absence

in 2011, Hugh Lennon, her boss, told her that she would be made redundant later that same month.

McCarey protested that her position had been made redundant without the requisite selection process, that there was an ongoing requirement in Lennon's practice for the duties and responsibilities relating to her position, and that she was willing and able to do the job.

She further alleged that her employer had responded to these points by saying that he was not interested in her arguments, and instead asked her to sign an undertaking stating that, in return for a redundancy payment, she would not take legal action in relation to unfair dismissal or discrimination.

Some months later the young mother, through her solicitor Robert Morgan,

lodged a complaint with the Employment Appeals Tribunal under the Unfair Dismissals Act.

On the same day in May 2012, a similarly worded complaint was made to the Equality Tribunal under the Employment Equality Acts, in which McCarey added the statement: "I believe that I was made redundant because I had returned from maternity leave and this was the second occasion in a space of three years in which I had taken maternity leave."

Hugh Lennon & Associates responded by raising a preliminary issue when the complaint was about to be considered at an Employment Appeals Tribunal hearing in Cavan. Its HR adviser, Michael O'Sullivan, submitted that, as McCarey had lodged two separate complaints, the EAT should

step back and await the decision of the Equality Tribunal before considering the complaint McCarey had made to it.

EAT chairman Thomas Ryan invited both sides to make written submissions on the issue of double complaints regarding what was essentially the same issue.

If a case is under consideration or investigation by a civil court or the Equality Tribunal, the EAT is expected to step back and let the other forum get on with the case. If the complaints are very different, however – one involving discrimination and the other unfair dismissal – both can be considered at separate hearings.

The chairman referred to the landmark 2006 Cullen v Connaught Gold Ltd case, in which the High Court held that an Equality Tribunal

investigation does not begin when the complaint is sent to the tribunal, but only when the Equality Tribunal director delegates the case to an equality officer for investigation.

As McCarey's unfair dismissal/discrimination case had not been referred on to an equality officer – and, therefore, the investigation had not begun, it was found that the EAT could lawfully go ahead with its hearings.

This means that McCarey will be back at a later date to trash out the disputed redundancy with Lennon, who is expected to vigorously defend his position that hers was a legitimate redundancy.

Gerald Flynn is an employment specialist with Align Management Solutions, gfflynn@alignmanagement.net

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