EsopCentre

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it's our business

newspad of the Employee Share Ownership Centre

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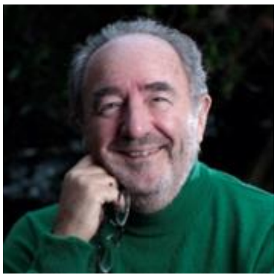
WELCOME

In this issue



From the life president

At last government and opposition are united in finding ways to fast track justice for as many as possible of the 736 postmasters and mistresses whose lives were damaged by the Post Office scandal, which has now been running for over 25 years. What's made the difference? Incredibly, no more than a tv drama which has seized the popular imagination.

Followers of the Roadchef Esop saga will immediately grasp the parallel. But where is our drama? At least we learn the cause is now being taken up in next month's edition of Ownership Matters by EOT expert Carole Leslie. And tv programme makers will surely be seeking a follow-up opportunity, given there are potential targets in high administrative, political and public service places and hundreds of victims with expectations destroyed.

So newspad is no longer alone in seeking redress for the Roadchef beneficiaries and in demanding portions of humble pie from the ministerial and official leaders in the Coalition and HMRC who have averted their eyes for too long.

Malcolm Hurlston CBE

Questions raised over minimal compensation offered to Roadchef employees by current trustees

The legal correspondent of *The Times*, Oliver Gill, revealed exclusively on December 24 that cheated Roadchef workers were to receive up to £13,000 40 years on.

Since the sum they would receive was estimated at up to £90,000 by their union a decade ago, many will have died and others left disappointed.

Esop Centre founder, Malcolm Hurlston, who has followed the saga since trades union leader David Basnett first raised the possibility with Co-operative Bank boss Lord Thomas in 1983, believes there are many more questions to be answered.

"First, has the trustee Winston Smith accounted for the large sum of compensation (thought to be over £10m) paid by Roadchef boss Tim Ingram Hill into an escrow account?

Secondly, what have the beneficiaries been told, about and when they will receive, the payout by the trustee?

Thirdly, has the compensation in the escrow account earned best interest rates during the decade of non-payment?

Fourthly, why were the some 400 surviving former Esop participants to get only 61 percent of the pot under the original out of court agreement? Lawyers argue the deed was unclearly worded.

Fifthly, why has it taken so long for the finally agreed compensation scheme to be approved by the High Court? Was there no automatic precedence for a scheme involving so many former employees?

Is it time we heard the full story from HMRC and others not covered in glory"

Update: *newspad* understands that Menzies has been engaged to handle the payout. Beneficiaries and practitioners directly affected can view relevant information at https://www.menzies.co.uk/roadchef-employees-benefit-trust-limited-frequently-asked-questions/

British Isles Share Plans Symposium—April 25 2024

Under the heading: *Employee Share Plans – Beyond the 1%*, the 2024 Symposium will focus on increasing productivity through an uplift in the percentage of total equity in employee ownership. If at least 10 percent of equity is in the hands of employees, as is frequent in France, this should boost productivity and benefit all investors.

Delegates will hear from: Baker McKenzie; CMS; David Craddock Consultancy Services; Deloitte; EQ; Global Shares; Macfarlanes; MM&K; RM2; Tapestry Compliance; Wealth at Work; and host White & Case.

The programme will include interactive panel sessions based on content accessible in advance online. The in-person session will be on the afternoon of Thursday April 25, at the offices of White & Case in central London. The *newspad* awards presentation will close the symposium, followed by a drinks reception.

A preliminary programme can be viewed on the event's webpage.

Admission rates:

Delegates from ***plan issuer companies*** *will be admitted* ***free*** *of charge.*

Practitioners:

Members: £450; Non-members: £800

Trustees:

Members: £400; Non-members: £650

Multi-booking discount: **50%** off cost of ticket for your **third delegate**.

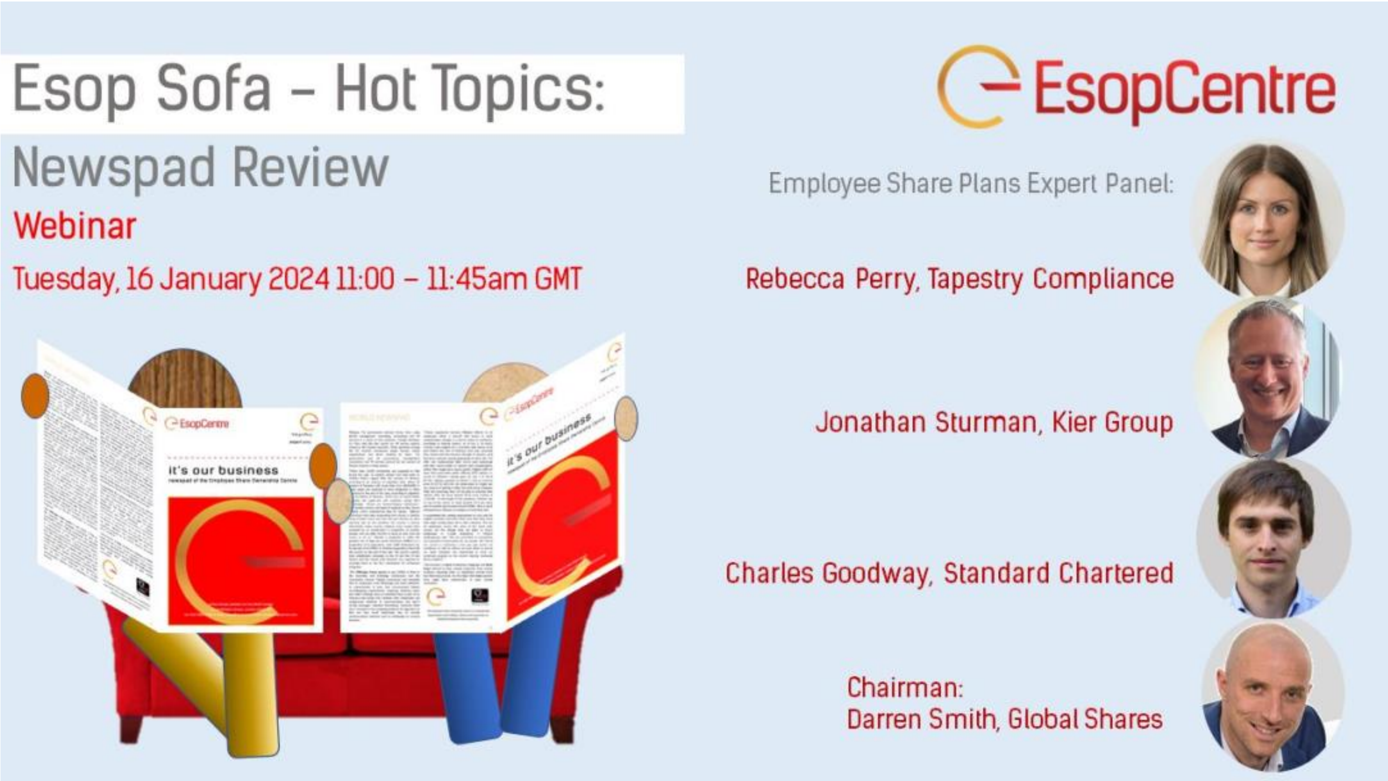
**All prices are subject to UK standard rate VAT*

There will be limited opportunities to attend remotely for international members not able to travel to London.

To register a delegate email: events@esopcentre.com or phone the team on +44 (0)207 562 0586

Thank you to British Isles Employee Share Plan Symposium host

WHITE & CASE



webinar - January 16

The Centre's first Esop Sofa-*newspad* Review of the year will be at 11:00am on Tuesday January 16. Our panel of share schemes issuers and experts, including Kier Group's Jonathan Sturman, Charles Goodway of Standard Chartered and Tapestry's Rebecca Perry, will look back over the employee share ownership hot topics of 2023 and their pick of features in recent editions of *newspad*. Chairing the panel, Darren Smith of Global Shares, will be asking for their predictions for the year ahead, too. Registration is open.

Newspad awards 2023

The Centre is accepting submissions for the 2023 *newspad* all-employee share plan awards.

The *newspad* awards recognise the achievements of companies which offer employee share plans and hold up best practice models for other companies to follow.

If your company or client made a notable contribution to employee share ownership, issued an inspirational share plan or showed excellence in its communication and presentation; has been creative in using share plans to overcome significant changes or challenging situations, increasing participation or using technology; or maybe upped its game through the enthusiasm of the chairman or ceo; then why not tell the world about it?

Companies can nominate themselves or advisers can make submissions on clients' behalf. Entrants can apply for awards in more than one category.

Submitting nominations is free and simple. Required information is kept to a minimum. Clarity matters more than length. The deadline for nominations is 17:00 on **Friday January 12 2024**.

The awards present a great opportunity to celebrate your company's or clients' achievements.

The award categories this year are:

1. **Best all-employee share plan**
2. **Best share plan communications**
3. **Best use of technology, AI or behavioural science**
4. **Best share plan response to significant changes or challenging situations**

Category descriptions and rules of entry can be viewed on the Awards 2023 webpage: esopcentre.com/awards

The winners will be decided by two impartial judges, experts in the use of employee equities, plus Malcolm Hurlston CBE, founder of the Esop Centre. **The finalists will be announced in *newspad* and award certificates will be presented during the Centre's British Isles Symposium 2024**.

If you have any questions, please contact us at esop@esopcentre.com or call +44 (0)20 7562 0586. We look forward to receiving your nominations.

Rate cuts needed to 'kick start' economy

Business confidence in the UK economy ended 2023 sharply lower as falling inflation failed to boost optimism ahead of the new year. According to the Institute of Directors' Economic Confidence Index, optimism in the UK economy fell to -28 in December. This was down from -21 in November and close to the low of -30 it touched in June 2023.

The reading may come as a surprise given the progress on inflation seen over recent months.

The headline rate fell below four percent in November for the first time in two years, prompting investors to start speculating that the Bank of England would cut interest rates in the first half of 2024.

A *City A.M.* poll of top economists predicted that the Bank of England could start cutting interest rates as soon as March, as the central bank faces mounting criticism for being too hawkish in its monetary policy. Markets have already priced in aggressive rate cuts for the first half of 2024, with investors betting that inflation will keep cooling and high borrowing costs will dampen economic growth.

Budget to be on March 6, says Treasury

Chancellor Jeremy Hunt will deliver the 2024 spring Budget on March 6, the Treasury has said. It will include the government's tax and spending plans as well as new growth and borrowing forecasts.

Ministers have hinted that the next Budget could include bold pledges on housing and taxes, as Prime Minister Rishi Sunak struggles to narrow the gap with Labour ahead of a general election widely expected to be held next year.

Four fintech unicorns the UK created in 2023

Capital-hungry tech companies have suffered under high capital costs in 2023 due to sticky interest rates, data security threats and reduced investment. The reduction is funding can be attributed to "high-interest rates, geopolitical tension and increased energy prices due to the Russia-Ukraine War," according to SaaS-based market intelligence platform Tracxn.

Fintech investment dropped to £2.61bn, down 72 percent year on year from £9.27bn, as investors moved towards green energy start-ups and AI.

Fintech in particular has had a tough year. However, generative AI has been the success story of 2023, with huge companies like OpenAI booming alongside smaller start-ups like StabilityAI, Pathway and Penelope.

The UK produced four unicorns in 2023, two of which were AI start-ups. Quantexa, an AI data analytics start-up focused on the banking sector, has a £1.42bn valuations and £292.90mn in funding. Synthesia, a generative AI firm, was similarly started as a unicorn in June, with a post-money valuation of $1bn.

Climate metrics surge in executive compensation plans

The share of S&P 500 companies integrating climate-related metrics into their executives' compensation plans more than doubled over the past two years, according to a new report from The Conference Board based on disclosure data from ESGAUGE.

Executive compensation was tied to climate-related metrics by about 25 percent of S&P 500 firms in 2021 but rose to 54 percent in 2023. The percentage also doubled in the Russell 3000 index, going from 16 percent to 32 percent.

Moreover, as the rate of adoption of climate and other ESG performance metrics increases, companies are starting to use them in long-term incentive plans: the share of S&P 500 companies that uses ESG metrics in both annual and long-term incentive plans grew from seven percent in 2021 to 12 percent in 2023.

"Companies that have not yet adopted ESG metrics for driving environmental performance should explore this avenue, especially in industries that have a significant environmental impact," said Matteo Tonello, managing director at The Conference Board ESG Centre and author of the report. "When implementing such metrics, companies should tailor them to their unique environmental risks and opportunities, rather than relying on off-the-shelf emission targets."

The Conference Board produced the report in collaboration with executive compensation consulting firm FW Cook. Data analysis for 2023 is as recent as December 4, 2023.

Exec compensation: an effective lever for corporate climate action

According to *Eco Business*, the widespread effects of climate change are putting increasing pressure on businesses to integrate climate considerations into their strategies and operations. Linking executive compensation to climate-related objectives, when implemented correctly, can serve as a useful lever in aligning behaviour and practices with climate goals.

For a majority of public-listed companies, especially in developing countries, pressure is mounting from investors, multinational clients and regulatory stakeholders for them to cut emissions and address climate risk. There is a growing global consensus among investors on how companies should incorporate climate considerations into board decisions, as indicated by strong participation in investor groups such as Climate Action 100+ and the Investor Group on Climate Change (IGCC) .

New year, new challenges - navigating exec pay trends in 2024

Chief Executive Research's recently released *CEO & Senior Executive Compensation Report* provides a view of the state of executive pay going into 2024.

In 2023, the median ceo base salary was up 4.1 percent, surpassing the 3.2 percent inflation figure released in November and falling short of the 4.9 percent increase in 2022.

The data suggests that 2024 may bring a further dip, with over 70 percent of surveyed companies projecting minimal (less than five percent) to no change in median ceo base salaries. Striking the right balance in compensation remains a challenge, especially for companies vying for leadership talent in a hard market.

Executive pay ratios widen, as inequality persists

The difference in median pay between chief executives in the FTSE 350 and other employees was 57:1 in 2022, according to analysis from the High Pay Centre.

The centre found that pay inequalities remained constant despite the high cost of living and having narrowed slightly during the pandemic, with the 57:1 ratio up slightly from the year before (56:1).

The median gap between ceos and their lowest-paid quarter of employees fell slightly in 2022 to 75:1 from 78:1 in 2021, however. Across FTSE 100 companies, the gaps were wider, with a median ceo to median employee pay ratio of 80:1 and a median ceo to lower quarter employee of 118:1. More than three-quarters (76 percent) of people polled previously said they thought top-earners should not be paid more than 20 times their low and middle-earning colleagues.

The BBC reported that, by 13:00 GMT on January 4, the pay of FTSE 100 chiefs would have overtaken the £34,963 annual median wage for full-time workers, according to the High Pay Centre - which is now operated by abrdn.

Including pensions, top bosses' average reward amounts to £3.81m per year. That works out to £1,170 per hour - 109 times the average full-time worker.

Top City lawyers would have to wait till the beginning of the following week to surpass the median worker's annual pay.

Executives at companies listed on the bigger FTSE 350 have a median pay of £1.32m, so they will need to work till January 10 for their pay to overtake the annual pay of the typical UK worker, according to the High Pay Centre. Leading bankers overtake the average worker's pay on January 17.

The calculations are based on salaries published in companies' annual reports.

The Trades Union Congress (TUC), which represents 48 member unions, said the figures were a sign that the UK faced "obscene levels of pay inequality".

But Prof Len Shackleton from free market think tank the Institute of Economic Affairs said that cracking down on chief executives' pay would "undermine British competitiveness" and lead to higher tax bills for everyone. "A ceo can make, or break, a company and therefore it's unsurprising they are paid generously," he said.

"Top earners pay stonking amounts in taxes: the top one percent of all earners in this country pay almost 30 percent of income tax. If we somehow stopped these people earning large amounts, many of them would leave the country and we would all have to pay higher taxes to compensate."

High Pay Centre director Luke Hildyard said the figures called into question claims that top earners in Britain were not paid enough. "When politicians listen to these misguided views, it's unsurprising that we end up with massive inequality, and stagnating living standards for the majority of the population," he said.

Throughout 2023, leading figures in finance and business called for higher pay for chief executives in the UK. They pointed to higher compensation in countries such as the US, where the median pay for S&P 500 bosses was more than $14m (£11.06m) in 2022.

In December, money management giant Legal and General Investment Management adjusted its executive pay guidelines to permit firms it invests in to offer more generous incentive payments.

The head of the London Stock Exchange, which has been passed over by some UK firms opting to list in the US, has also argued that low chief executive pay levels create a risk to the UK economy.

A spokesperson for the struggling business trade body CBI which represents some of the listed companies, said: "High pay is only acceptable when matched by exceptional performance. Firms should also always demonstrate how executive pay links to the delivery of company strategy. All businesses will be acutely aware of the sensitivities around executive rewards, particularly against the backdrop of a serious cost-of-living squeeze."

Centre president Malcolm Hurlston added “Len’s comments make sense when applied to ceos but don’t apply in companies where other members of the top team are overrewarded because the ceo doesn’t want to stand out as a tall poppy.”

The calculations by the High Pay Centre assumed that chief executives work 62.5 hours a week, based on a study from the US by Harvard Business School. This equates to 12.5 hours a day, not including weekends and bank holidays in England and Wales, which is how the think tank calculated the hourly pay of £1,171.

Scandal-hit companies cut executive compensation

On December 13 *Reuters* reported that BP cut over $40 million in compensation from former ceo Bernard Looney after the British oil giant concluded he had knowingly misled the board over personal relationships with colleagues.

Looney resigned in September after less than four years in the top job for failing to fully disclose details of past personal relationships with colleagues.

The list of companies whose executives had to forego their bonuses or pay them back after being hit by scandals includes NatWest Group, McDonald’s, and Wells Fargo.

More changes ahead for Hollywood as Netflix reworks exec pay

According to the *Hollywood Reporter*, Apple kicked off 2023 by unveiling that ceo Tim Cook had requested a pay cut following a drop in shareholder support for his compensation package. Then, on December 8, Netflix disclosed changes to the streaming giant's executive pay structure. The overhaul was seen as a reaction to a June vote — during the Writers Guild of America strike — when its shareholders symbolically rejected compensation packages for top execs.

Are other publicly-traded Hollywood giants up next to update their compensation policies in 2024?

Apple and Netflix could simply be seen as special cases, but critics on Wall Street and beyond have in the past urged companies to focus on shareholder friendliness. In November, AMC Theatres shareholders voted against the compensation packages proposed for its executive officers, including ceo Adam Aron, who was paid $23.7 million in 2022.

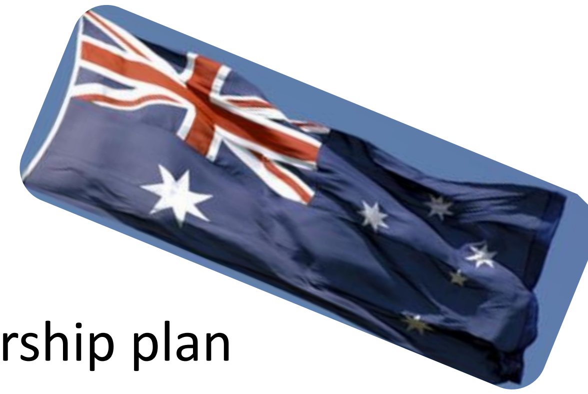
The parade of Hollywood ceo pay disclosures in regulatory filings in 2023 will be remembered for bad timing (those disclosures were made public right during the ramp up to the strikes) and ugly optics (huge paydays for executives during a labour standoff). On May 30, WGA leadership sent letters to both Netflix and Comcast to vote "no" on the companies "Say on Pay" proposal. "Shareholders should send a message to Comcast that if the company could afford to spend $130 million on executive compensation last year, it can afford to pay the estimated $34 million per year that writers are asking for in contract improvements," WGA West president Meredith Stiehm wrote.

Those pay packages also were made after major layoffs in various parts of the sector from Disney, Paramount, Warner Bros. Discovery and many other media companies, leading to criticism from people in Hollywood and shareholders alike.

New EOTS

- Independent insurance, risk and wealth management group Thomas Carroll Group
- Tech company brand creator Design by Structure
- Post design and build specialist, East On Media Solutions
- Contact centre outsourcer Interact
- Law firm Hudgell Solicitors
- Sustainable furniture manufacturer Crystal Doors
- Property audit firm Goodman Nash
- Online specialist in the handling and distribution of flat roofing materials Optagon Group

WORLD NEWSPAD



Australia

Quiip launches employee share ownership plan

Quiip, Australia's leading specialist in social media and online community management, has announced an Employee Share Ownership Plan in collaboration with two senior staff members. Lauren Piro, people and culture director, and Larah Kennedy, client services director, are the company's first employee owners.

Quiip's Esop, which will enable employees to become owners by acquiring a stake in the business, is a rarity among Australian companies.

This development follows Quiip's impressive growth in 2023, marked by the addition of the Alcohol and Drug Foundation, Yes23 and the Museum of Australian Democracy (MOAD) to its expanding client portfolio. Furthermore, Movember, Publicis, VicHealth and Australian Ethical have renewed their commitments with Quiip.

Alison Michalk, ceo, said: "This has been in the works for nearly two years. Employees are integral to our success, and I believe in the redistribution of profits. I'm proud as it's a unique initiative that not many companies undertake. Leading the way as a B Corp is a challenge that keeps me going!"

Quiip recently conducted an Employee Stock Ownership Plan Ask Me Anything (AMA), providing further details about the Esop. The Esop empowers employees to acquire collectively up to a 30 percent ownership stake in the business.

Canada opens a pathway to worker ownership

With legislation set to come into effect in the new year, we can expect to see a surge in Canadian companies converting to employee ownership in 2024.

The legislation creates a framework for employee ownership trusts and provide incentives for Canadian companies to transfer ownership to employees. A capital-gains tax break on the first $10 million of a sale could save departing business owners more than $2 million in taxes.

"We've finally got all of the pieces in place that we need for there to be a burgeoning employee-ownership sector in Canada," said Jon Shell of Social Capital Partners, a Toronto-based nonprofit that champions employee ownership. Shell and his colleague Bill Young launched The Ownership Fund to build a demonstration portfolio of worker and homeownership funds and businesses.

South Korean exchange controls to be relaxed

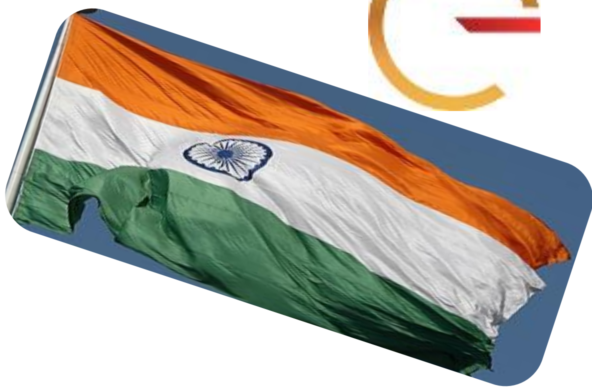
In a welcome start to the New Year, the Financial Services Commission of Korea has given advance notice of a proposed change in law allowing South Korean resident employees to dispose of foreign listed shares acquired under an employee share plan, without the use of a Korean licensed broker.

On December 29 2023, the Financial Services Commission of Korea issued an advance notice in relation to legislative action intended to change the rule clarified by the FSS last year and allow South Korean resident employees of multinational companies who acquire shares through an employee share plan to dispose of these shares without the use of a Korean securities company.

In practice, this means these employees will be able to sell shares, receive proceeds of sale and hold shares without the involvement of a Korean securities company or an account linked to the KSD. While some companies may involve a KSC or KSD-linked account in their processes in any case, this will be good news for employees, companies and share plan administrators where that is not the case, and will avoid the need to put specific steps in place in order to comply with the more restrictive rules.

Centre member **Tapestry Compliance** commented that an earlier "June 2023 press release was intended to clarify the rules, and did not introduce any new requirements,but we understand that the steps strictly required to trade in shares were not being complied with by many local residents due to the previous uncertainty. The clarification therefore caused concern for many global companies operating in South Korea. We know, in practice, this led to many companies revisiting their plan operation in South Korea and really giving thought to the feasibility of operating their plans there."

India



Burmans seek probe into allotment of 8% RFL stake to Saluja via Esops

The *Hindu* reported that the Burman Family, which owns a 21 percent stake in the listed entity Religare Enterprises Ltd (REL), has called for investigation into the allotment of approximately 2.14 crore shares, constituting eight percent of its subsidiary Religare Finvest Ltd (RFL), to Rashmi Saluja, the chairperson of REL, through Employee Stock Ownership Plans.

"...[It] requires investigation in terms of compliance with SEBI Takeover Regulations," spokesperson of the Burman Family said in a statement.

"It is unfortunate that a solitary executive has cornered significant quantum of remuneration through Esops at REL, Care Health Insurance Ltd, and RFL, all without approval and requisite disclosure to REL shareholders," the spokesperson said.

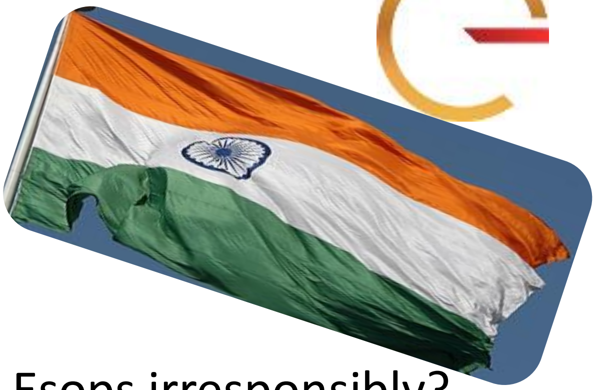
"This raises question mark on the management and the independence of the independent directors and their complicity in such unjustified dole outs. REL board should answer the shareholders whether there exist more instances of Esop issuances to entities, and potential conflicts of interest," the spokesperson added.

Esop cashout events drop by 62% in 2023 as funding winter bites

The number of employee stock option cashout events by startups fell by more than 62 percent to 16 in 2023 from 42 a year before as the funding winter deepened, according to data from equity management platform Qapita. This was a three-year low from 2021, when a pandemic-induced funding boom was at its peak, with 43 such Esop cashout events in the startup ecosystem.

However, a $700-million cashout offered by Walmart-owned Flipkart to its employees due to a regulatory requirement meant that the total value of Esop cashouts in the Indian startup ecosystem surged 178 percent year-on-year to $812 million.

Apart from the mega Esop cashout of Flipkart-PhonePe, the total value of Esop liquidity events in 2023 was a miniscule $112 million, when compared to $292 million of 2022 and $423 million of 2021.



India

Are your investee companies giving away Esops irresponsibly?

In a thinkpiece for *Mint*, former ceo of Equitymaster Rahul Goel wrote "I have often been intrigued by disclosures about employee stock option plans of the companies in which I've invested. How many shares are these companies giving out? To whom are they giving the shares? What is the criteria?

"I chose to look at it from the perspective of a long -term shareholder. I want to be sure the company is attracting and retaining the best talent out there, while at the same time being fair in its practices and approach to rewarding employees.

"I took two companies (I own shares in both) and checked their publicly available Esop policy. Here's Infosys's criteria as per its 2019 release:

> *The grants allocated to employees over a period of seven years will vest based on challenging performance criteria of a) relative Total Shareholder Return (TSR) against an industry peer group, b) relative TSR against domestic and global indices and c) operating lead performance metrics such as total revenue and digital revenue growth, and operating margins.*

"Additionally, the total grant has been specified as 50 million shares, or 1.15 percent, of the company. The terms are clear and designed extremely well, aligning benefits to the interest of the other stakeholders i.e. the company and long-term shareholders.

"Now, here's an extract from the other company, which I will refrain from naming: *Esops may be awarded to ensure a long-term commitment and prudent decision-making aligning employee's interests with the shareholder's interests.*

"A deeper dig revealed the vesting period to be three years. Perhaps they have other guidelines, but not available in the public domain. This left me anxious.

"The first company has a transparent policy that's designed to keep everyone's interests aligned– company, long-term shareholders, and employees. On the other hand, it's not clear whether the second company even has a policy.

"Esops are important for various reasons. The most obvious is to attract and retain talent. If done well, this is a small cost to pay for potentially large long-term gains for other stakeholders. This is a big "if" here. Recently, it came to light that the chairperson of a company owned Esops valued at ₹480 crore in the same company.

"Whether that is legally right or not, to me, this does not reflect a high level of corporate governance. If it was, all this information would have been public right from get go.

"There is one other reason I am interested in this. Esops are earnings dilutive. For the same amount of earnings if there are more shares, then you get a lower earnings per share. And therefore, if Esops, which amount to issuing new shares, are not handled well, the "loss" to some stakeholders just compounds.

"To conclude, many investors don't have a clear answer to whether the companies in their portfolio are giving away Esops responsibly. That's not good."

USA

Esop group urges 9th Circuit redo on Labor Department lawyer fees

Bloomberg Law reported that the ESOP Association on December 18 urged the US Court of Appeals for the Ninth Circuit to rehear its October decision declining to award attorneys' fees to a Hawaii architectural firm that defeated a Labor Department challenge to its stock plan. The firm, Bowers & Kubota Consulting Inc, asked that the case be reheard because it misapplied the standard for awarding fees under a federal law aimed at curbing abusive lawsuits involving the government.

According to the firm, the court incorrectly swapped the standard used by the Equal Access to Justice Act—which denies attorneys' fees when the government's litigation position was "substantially justified"—for a more forgiving standard that asks whether the government "reasonably believed" its position was justified.

The ESOP Association took the argument a step further. The lawsuit against Bowers & Kubota was an attempt to hold the firm liable for failing to comply with the department's "idiosyncratic interpretation" of a particular provision of the Employee Retirement Income Security Act that Congress intended to be fleshed out through a formal regulation, the association said.

But for "nearly 50 years, the DOL has failed to promulgate such a regulation, and instead has sued Esop stakeholders for failing to comply with the DOL's subjective opinion on what that provision should require (but does not)," the association said.

The underlying lawsuit says Brian Bowers and Dexter Kubota sold all their stock in Bowers & Kubota to the company's Esop for significantly more than the shares were worth.

A federal judge ruled against the department after a one-week trial, saying it failed to show that the $40 million paid by the Esop in 2012 was an unfair price for the company's stock. The judge awarded the defendants about $40,000 in costs but denied their request for attorneys' fees.

The defendants appealed, saying they should have been awarded fees because the department's litigation position was unjustified.

The Ninth Circuit disagreed, saying in a 2-1 opinion that while department presented "shoddy" case, it "arguably had a reasonable basis—at least at the time of trial—in questioning whether the company's profits could surge by millions of dollars in just months." Judge Kenneth Kiyul Lee wrote the majority opinion, and Judge Daniel P Collins dissented in part.