

Bonus clawback provisions: Clear and reasonable

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In the recent High Court case of [Steel v Spencer Road LLP](#), an employee who gave notice one month after his substantial discretionary bonus was paid lost his appeal to retain that bonus as the judge did not consider a clawback provision a restraint of trade or a penalty clause.

The employee's contract stated that they must remain in employment for three months after the date of the bonus payment, and not have served notice. In addition, the notice period was three months, and the employee was unable to work for a competitor within a thirteen-week restrictive period after termination of employment. As the employee gave notice within the specified three-month post-bonus period, his employer issued a statutory demand for the return of the bonus, plus legal fees.

After losing his initial case, the claimant paid back the bonus amounting to £187,500, considerably higher than his £65,000 a year basic salary.

The appeal was heard and rejected on the grounds that although a clawback provision is *meant* to discourage employees from resigning (meaning the employee would have to continue working for the employer for six months after the bonus payment to retain it) this does not amount to a restraint of trade and had no bearing on allowing the clawback of the discretionary bonus. The claimant did not bring issue with any other aspect of his contract, such as the non-compete clause and, as such, this also had no impact.

The doctrine of restraint of trade is still to be considered in new contexts and in emerging applications, however the judge considered that in this case it was the application of an established precedent.

Employers who wish to include clawback provisions to disincentivise resignations should ensure that:

- Clawback provisions and other terms (such as the notice period, non-compete clauses) are clear and reasonable;
- There is a clear and fair distinction between the employee's salary and the discretionary bonus, and that the bonus is not intended to be part of the employee's actual remuneration; and
- Employees are aware of and fully understand the terms and effect of a clawback provision and how it could be enforced.

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