

## PRESS CUTTING

**People Management**  
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### **Tullett Prebon v BGC Brokers**

#### **Clawing back bonuses and other payments from departing staff just got harder**

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There is nothing new in the idea of clawing back payments from staff when they leave; this has happened for some time over training costs. The issue has become more important recently with regard to bonuses, and it is likely that the HR department will be the one that has to ask the hard questions.

A recent case, *Tullett Prebon v BGC Brokers* (2010 EWHC 484 QB), has considerably reduced the likelihood of successfully retrieving money where arguments occur. The main part of the case concerned the organised poaching of a team of brokers from one company by another. The court agreed that this had happened, found that it was unlawful and awarded a large amount of damages to Tullett Prebon.

#### **The case**

The departing Tullett brokers had tried to set up constructive dismissals for themselves, which would have allowed them to escape restrictive covenants in their employment contracts. The court found that this was a fabrication. The brokers that recruited them had induced them to break their contracts and had unlawfully conspired to injure their previous employer. One effect of the case will be to emphasise the risks of poaching staff from rival firms, especially as whole teams.

The brokers' original employer was also seeking to "clawback" retention and loyalty bonuses which, according to their contracts, it was entitled to do if the brokers left within a certain time of receiving them. The firm argued that the provisions in the contracts were penalty clauses or restraints of trade. These arguments had previously been thought effective, but the court had little difficulty in dismissing them. It said repayment of a sum paid under an employment contract could not be a penalty, and the clawback provision did not in fact restrain the employees as a restrictive covenant would do - it just cost them money. So that was that.

#### **Bonus schemes**

Unless the terms governing a bonus specifically say it can be clawed back under certain circumstances, there will be almost no chance of doing so. Exceptions might be where the award was granted on the basis of misrepresented performance or where the employee can be sued for damages for serious misconduct, which could include the bonus award.

There is no one-size-fits-all solution to clawbacks. It is essential to identify the purpose of an intended clawback and the circumstances that are likely to trigger it, and then ensure that any written scheme is accurately drafted to achieve the desired effect.

Further Info

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