

Lawyers prepare for battle over bonuses for former staff

Investment banks that fail to consider staff who lose their jobs this year for a pro rata bonus may face litigation, as the industry prepares for further cuts, according to lawyers.

Dawn Cowie

The majority of bonuses are not guaranteed and are instead at the discretion of employers, but the inconsistency of approach among different banks could help those claimants who try to claw back some portion of their bonus.

Sarah Henchoz, senior associate at Allen & Overy, said: "A claimant could argue that his employer has used its discretion 'perversely' in refusing to pay a pro rata portion of bonus for the previous year if he can point to other banks that have paid bonuses to former employees." Ronnie Fox, principal at law firm Fox, said that he had only heard of one example of a bank that was not prepared to pay some amount of pro rata bonus payment.

UBS is one of those banks that is looking at the option of making pro rata bonus payments to staff that are made redundant, according to one source at the Swiss bank. UBS declined to comment.

Recent attempts by former employees to claim part of their bonus after they are made redundant have suggested that the law is employer-friendly.

In one landmark case, *Commerzbank v Keen* in 2006, the court found against a trader who argued that his employer had exercised its discretion "irrationally or perversely" in respect of bonus payments made in 2003 and 2004, which he argued had been lower than the level recommended by his line manager.

It also upheld the position that the trader was not entitled to any portion of his 2005 bonus, having been made redundant in June of that year.

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Simon Watson, head of the international employment group at Simmons & Simmons, said:
“There is no obligation for a bonus to be paid to someone who is not employed on the payment date for that year but there will be people who are prepared to have a go, especially in the current environment.”

However, one factor that may deter claims is the fact that the amounts involved in this year’s bonus round may not be worth the battle.

Henchoz said: “The size of the bonuses paid last year made them worth fighting for and claimants sought to argue that they had a contractual entitlement to them, but the fact that this year’s bonuses are likely to be nil or low will probably lead to less chance of litigation, particularly given the cost of litigation.”