

## Want to Leave Your Employment? That Will Cost You!

November 16, 2023

---

### Uncapped Bonuses

It's the run-up to bonus season in the UK and there is a lot to talk about. While the markets may have cooled down, the caps are off! In a controversial move, regulators removed the regulatory cap on banker's bonuses on 31 October 2023.

Regardless of the industry sector you are in, if you are an employer and are paying out healthy bonuses this year, how can you ensure employees don't take the money and run? The recent case of *Steel v Spencer Road LLP* highlights how businesses can use bonus clawback mechanisms to protect their interests.

### Restraints of trade – back to basics

Blanket 'restraints of trade' are unenforceable in the UK unless they are: (i) protect a legitimate proprietary interest; (ii) go no further than is necessary to protect that interest; and (iii) not contrary to public interest.

The UK courts have generally shied away from categorically defining exactly what a restraint of trade is and what it is not. Helpfully, the judge in *Steel v Spencer Road LLP* confirmed that a 'Bonus clawback provision' is **not** a restraint of trade and if drafted correctly, is enforceable.

### *Steel v Spencer Road LLP* – the facts

Mr. Steel was employed at SR LLP. He received a basic salary of £65,000 and an annual discretionary bonus. He received a bonus of £187,500 in January 2022 (Bonus). He resigned from SR LLP in February 2022. This Bonus was subject to a clawback provision contained in his employment contract, which among other things, required him to reimburse SR LLP for his Bonus if he left within three months of the bonus payment date. After Mr. Steel resigned, SR LLP sought to rely on the clawback provision and subsequently served a statutory demand for the bonus to be repaid (i.e., they tried to force him into bankruptcy when he failed to pay back the Bonus).

Mr. Steel applied to the Insolvency and Companies Court (ICC) contending that the bonus clawback provision amounted to an "unreasonable restraint of trade" and was therefore unenforceable against him. The ICC dismissed the application on the basis that the provision did not actually prevent him from working elsewhere. As a result, it did not amount to a restraint of trade. On appeal, the High Court agreed with the ICC noting that, despite a bonus or commission scheme being conditional on the employee remaining at the firm for a set time, it merely operated as a disincentive to the employee resigning. The fact that Mr. Steel would have had to remain employed for six months (including his notice period) after the bonus payment and that he also was subject to post-termination restrictive covenants had no bearing on the interpretation of the bonus clawback.

### Comments

In our view, this case shows the utility of including bonus clawback provisions either in the employment contract or in the bonus award letter itself. However, a few words of caution: the terms of the clawback need to be carefully considered (to avoid the risk that it constitutes a penalty and is therefore invalid); the drafting needs to be clear and concise to reflect those valid aims, and finally — always consider the tax consequences of gross or net repayment provisions.

---

---

## CONTACTS

For more information on bonus clawback policies, contact your Katten lawyer or any of the following [Employment Litigation and Counseling](#) lawyers:



**Christopher Hitchens**  
+44 (0) 20 7776 7663  
christopher.hitchens@katten.co.uk



**Brigitte Weaver**  
+44 (0) 20 7770 5235  
brigitte.weaver@katten.co.uk



**Maxime Chevot**  
Trainee Solicitor, Litigation

# Katten

katten.com

Paternoster House, 65 St Paul's Churchyard • London EC4M 8AB

+44 (0) 20 7776 7620 tel • +44 (0) 20 7776 7621 fax

Katten Muchin Rosenman UK LLP is a Limited Liability Partnership of Solicitors and Registered Foreign Lawyers registered in England & Wales, regulated by the Law Society.

A list of the members of Katten Muchin Rosenman UK LLP is available for inspection at the registered office. We use the word “partner” to refer to a member of the LLP. Attorney advertising. Published as a source of information only. The material contained herein is not to be construed as legal advice or opinion.

Katten Muchin Rosenman UK LLP of England & Wales is associated with Katten Muchin Rosenman LLP, a US Limited Liability Partnership with offices in:

CENTURY CITY | CHARLOTTE | CHICAGO | DALLAS | LOS ANGELES | NEW YORK | ORANGE COUNTY | SHANGHAI | WASHINGTON, DC

11/14/23