

Article by **Chris Weaver and Orla Bingham**, Associate and Solicitor in the Employment at **Payne Hicks Beach** first published by HR Magazine (UK) online on 12 September 2016 and is reproduced with kind permission

<http://www.hrmagazine.co.uk/article-details/can-and-should-employers-ditch-bonuses>



Chris Weaver  
Associate, Employment



Orla Bingham  
Solicitor, Employment

## Can (and should) employers ditch bonuses?

Chris Weaver and Orla Bingham, SEPTEMBER 12, 2016



[COMMENT ON THIS ARTICLE](#)

**Some employers are ditching bonuses. But is this a good idea and what are the legal implications?**

Bonus schemes can be a vital tool for many employers who wish to incentivise, increase productivity, retain employees, or reward exceptional performance and contribution. However, these desired outcomes do not always follow. Bonus schemes can be ineffective, exploited, taken for granted and ultimately counterproductive. So are they still fit for purpose?

Strong financial incentives can tempt employees to behave unethically, to take greater risks, or to use shortcuts for higher personal gain. EU caps on bonuses in large banking institutions were recently introduced in an attempt to **curb the kind of risk taking** that arguably contributed to the financial crisis. Bonuses have consequently decreased for many, with fixed compensation being increased to make up for this. Bonus plans can also create tension among co-workers, promote an overly competitive environment, and impede teamwork and collaboration.

Furthermore, if bonuses are largely dependent on company performance morale suffers when bonus payments fluctuate. Employees feel their hard work is not recognised, or that the level of compensation isn't worth the added effort. Motivation is consequently lost, productivity diminished and staff may eventually leave. Alternatively, when bonus payments are expected or 'the norm' people can become complacent.

Employees can also feel resentful and demoralised when they perceive bonuses being unfairly or arbitrarily awarded. The majority of bonus schemes are 'discretionary' and so designed to be paid at the will of the employer. Such schemes may have some criteria, but ultimately the employer reserves the power to make whichever payments it chooses. This is open to abuse by unscrupulous organisations, and **disputes over unfair bonus payments** are increasingly common. Case law has, however, sought to curtail this power, and makes clear that employers do not have unrestricted discretion but must apply this in good faith, rationally and on reasonable grounds.

The ineffectiveness of many bonus schemes is causing some employers to scrap them altogether. Many believe they are not obliged to continue making bonus payments if there is no express clause to this effect in an employment contract. But employers forget that employees gain contractual entitlements through 'custom and practice', for example, regularly paying bonuses to someone who has performed similarly over previous years is likely to result in a contractual entitlement. Employers cannot, therefore, simply **cease making these payments**.

Doing so could result in claims by the employee for breach of contract and constructive dismissal. This is the case even if there is a clause in the employment contract allowing employers to change any contractual term. Courts rarely enforce such clauses, and employers can generally only rely on them for minor amendments, not fundamental or detrimental changes to the employee's terms.

Ideally employers should seek agreement with staff over any changes to bonus terms. However, if a bonus is a substantial part of an employee's remuneration package they are unlikely to forego this benefit unless an alternative can be agreed, such as an increase to base salary or share incentives.

The theory behind incentive compensation is that money motivates employees to perform well. For many employers this ideology works. However, incentives such as bonuses do not always achieve the desired outcome. Over time a bonus scheme may **no longer effectively incentivise** or may encourage destructive behaviour. Staff may feel undervalued if bonuses are dependent on factors beyond their control, or disgruntled by unfair bonus allocation. Fair and transparent application of a bonus scheme and respect for people's contractual bonus rights are key to preserving any bonus scheme's value, maintaining employee motivation and avoiding disputes.

**Chris Weaver is an employment associate, and Orla Bingham is an employment solicitor at Payne Hicks Beach Solicitors**