



## CITY BONUSES

*This comment, written by Paul Lambdin, first featured in the 28 October 2009 issue of City AM.*

There is growing anger in the City at the Shadow Chancellor's suggestion that bonuses for this year should be limited to £2,000 in cash, with anything more paid in shares.

This proposal is only possible because City bonuses are generally based upon the "discretion" of the employer. It would be hard for a shareholder - even the government - to override a clear bonus commitment in a contract.

However, can a government (or prospective government) really influence a company's discretion in bonus arrangements?.

In recent cases, the courts have recognised that bonuses have ceased to be simply an "extra" and have come to be the normal expectation as a reward for effort and success and have upheld challenges to bonus payments. One example of the courts' interference with discretion is that in a recent discrimination claim, it was said that the Tribunal should not allow a City culture to justify a lack of transparency in bonus arrangements. In response to this, many institutions have sought to draft agreements which seek to preserve discretion as much as possible. The Shadow Chancellor's proposal depends upon employers having done so successfully. However, an employer's discretion is never absolutely unfettered, and employees can challenge a bonus payment that is perceived as too low on the grounds of irrationality or perversity or breach of the implied term of trust and confidence.

In most cases, it would be possible for government to impose a blanket ban on cash bonuses over £2,000, but if such a scheme is introduced, both employers and employees may want to consider the possibility of a legal challenge: employees may seek ways to bring claims on the basis of the developing case law.

The reality remains that many employees have worked hard this year in the expectation of a cash bonus and George Osborne's suggestion may increase the pressure upon institutions to have clearer parameters for bonuses in the future.

Some employers were already moving towards a greater emphasis upon deferred bonuses and long-term incentive plans, partly in order to avoid a high turnover of staff. What will happen with bonuses is unclear, but moving the reward goal posts for employees may damage the reputation of the UK, prompting both banks and their employees to think further about overseas jurisdictions.

**Paul Lambdin is a Partner in the employment team at Stevens & Bolton LLP. Contact: [paul.lambdin@stevens-bolton.co.uk](mailto:paul.lambdin@stevens-bolton.co.uk)**