

# Discretionary Bonuses – Handle with Care

Debbie Grennan

# Introduction

- The current climate – and it may get worse before it gets better!
- Contractual and discretionary bonuses
- Express and implied terms
- Standard contractual principles apply
- No UCTA!

# Does a discretion exist?

- ***Small v Boots Co plc* [2009] IRLR 328, EAT**
- ***Brogden v Investec Bank plc* [2016] EWCA Civ 1031, [2017] IRLR 90**

# When is a discretion no longer a discretion?

- ***Farrell Matthews and Weir v Hansen* [2005] IRLR 160, EAT**
- ***Mouradian v Tradition Securities and Futures* [2009] EWCA Civ 60**
- ***Dresdner Kleinwort Ltd v Attrill* [2013] EWCA Civ 394, [2013] IRLR 548**

# The Exercise of the Discretion

- ***Clark v Nomura International plc* [2000]**  
**IRLR 766, QBD**

*“My conclusion is that **the right test is one of irrationality or perversity** (of which caprice or capriciousness would be a good example) i.e. that no reasonable employer would have exercised his discretion in this way.”*

# Two key cases

- ***Braganza v BP Shipping Ltd* [2015] UKSC 17, [2015] IRLR 487**
- ***IBM UK Holdings Ltd v Dalgleish* [2017] EWCA Civ 1212, [2018] IRLR 4**

**You have the notes – let`s ditch the slides  
and talk!**

**Let`s talk about Braganza!**



**What do we take from Dalglish?**



**So where does this take us?**



**Guildhall**  
CHAMBERS

# Q&A



**Guildhall**  
CHAMBERS

Finally

Thank

you!

