

“ Plain speaking legal advice ”

Mobility Clauses

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Mobility clauses - a move in favour of employers

The Court of Appeal has held that an employer can in certain circumstances use a mobility clause to avoid making an employee redundant.

In *Home Office v Evans*, an Immigration Officer working at the London Waterloo Eurostar Terminal was informed by his employer, the Home Office, that the immigration desk at Waterloo would close. The Home Office had decided before making the announcement that they would offer their employees' suitable alternative employment where available. If the employees did not accept this alternative employment then they would be made redundant. The Home Office had decided to rely on the mobility clause in the employees' contracts of employment in order to do this, rather than initiating the redundancy procedure for when a workplace closes down.

Evans' mobility clause enabled him to be transferred anywhere in the UK or abroad. He was told in August 2004 that he would be moved to Heathrow. In September 2004 he resigned and claimed breach of contract and constructive and unfair dismissal.

The Employment Tribunal held that there was a redundancy situation and so the Home Office's redundancy policy should have been applied. By invoking the mobility clause instead of the policy the Home Office was in breach of their implied duty of trust and confidence owed to Evans. There was a case against the Home Office for unfair dismissal.

However, the Court of Appeal has now held in *Evans* that there is no reason in law why an employer can't use a mobility clause to avoid redundancies. But an employer must invoke the clause first; they cannot start redundancy procedures and then switch to the mobility clause.

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Since the Appeal Court's decision employers need to be particularly careful about drafting mobility clauses. Employers should take note of the following points:

- In drafting the mobility clause employers need to have regard to the geographical area covered. It may not be acceptable to an Employee for the clause to require them to move to as broad an area as anywhere in the UK, for example.
- They must consult with the employee and give them advance notice of any transfer. How much advance notice the Employee is entitled to should be stipulated clearly in the clause and then complied with.
- They must only invoke the mobility clause when there is a proper justification for doing so. The clause must be invoked genuinely – not simply to be put as a defence to a Redundancy claim for example.
- The clause should not conflict with the employer's other policies which affect the procedures of the organisation.

Home Office v Evans (2007) EWCA Civ 1089

If you would like to discuss any of the issues raised in this article then please contact Ashley Holden on 0118 977 4045 or by email to aholden@herrington-carmichael.com

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