

EMPLOYERS - KNOW THE LAW

Changing Terms and Conditions of Employment

Specialising in employment law, Maxine Orr is a Partner in Worthingtons Solicitors, discusses a case revealing the fine line between contract change and constructive unfair dismissal.

It is very difficult, if not impossible, for an employer to alter an employee's terms and conditions of employment. Like all legally binding contracts, the terms of an employment contract can only be altered if both parties to the contract agree to the changes.

Nonetheless, employers often introduce new terms and conditions in the workplace. This may be to reflect legislative changes or as part of an attempt to ensure the future of the business. When considering making any changes an employer must tread very carefully. There is always the risk that in altering terms and conditions, the employee could terminate the contract and claim constructive unfair dismissal. A recent Employment Appeal Tribunal considered this thorny issue.

Ms Thornley was an architect employed by the BBC since October 1990. In November 2001, a substantial part of the construction department, within which she worked, was transferred to Land Securities Trillium Ltd. After the transfer, new plans were outlined to reduce the number of in-house architects and rely instead on external consultants. Under the proposed restructure, Ms Thornley's role was reduced to overseeing the external consultants rather than undertaking architectural duties herself.

In October 2002 she complained to her employer that her professional expertise was being dissipated by lack of involvement in the complete design process and without hands-on work she was becoming de-skilled as an

architect. In effect she felt that her position was redundant. She was issued with a new job description and new job title. She raised a formal grievance but her employer stated that the changes for her job did not amount to a redundancy situation and her grievance was not upheld. As a result Ms Thornley resigned and brought a case for constructive unfair dismissal in the employment tribunal.

The Employment Tribunal, in upholding her complaint, stated that "by

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imposing a new job description, the employer had fundamentally breached the terms of her contract that her principal duty was to lead on large or complex projects in which she would have a hands-on role from inception to completion". The company argued that under its flexibility clause, it was entitled to change the content of her work and, in any event, the duties of her new role were within the scope of her original contract. The flexibility clause in her contract stated that "you must perform any other post you may subsequently hold". In addition, she must perform to the best of her ability "any other duties which may



reasonably be required of you". The tribunal rejected its argument and held that Ms Thornley had been entitled to resign as a result of the breach of contract and that she was therefore constructively dismissed. The Company appealed.

The Employment Appeal Tribunal, in

dismissing the appeal, concluded that the extent and nature of the changes imposed on the employee "did not fall within the scope of the discretion afforded to the employer under the flexibility clause" in the employment contract. The Tribunal emphasised that obligations contained in a contract of employment were always subject to the express requirement of reasonableness.

Employers with concerns should always seek professional legal advice before making any changes to terms and conditions of employment in the workplace. 