

Verbal assurance not binding

The Employment Appeal Tribunal (EAT) has held that an employer who did not increase an employee's salary did not breach the employee's contract of employment,¹ despite the employee having been assured by Human Resources (HR) that her salary would increase if her performance was satisfactory.

Background

Ms Earle accepted the offer of a job with the Equality and Human Rights Commission (EHRC) which provided for a salary range for her position. Ms Earle was disappointed with the starting salary and contacted HR before entering into a contract of employment. She was assured by an HR officer of the EHRC that she would progress through the salary range as long as her performance was satisfactory.

Pay review clause

Ms Earle's contract of employment contained a pay review clause, which stated:

"Progression through the salary range will be reviewed annually on or around 1 October in each year until the maximum of the range for your role has been reached. Any progression review will include an assessment of your performance during the preceding 12 months. There is no obligation on the EHRC to increase the level of your basic salary at a review. Any increase awarded in one year will not create any right or entitlement or set any precedent in relation to subsequent years."

Ms Earle successfully argued at the Employment Tribunal stage that she was entitled to a pay increase each year, so long as her performance was satisfactory. The EHRC appealed.

The EAT upheld the EHRC's appeal that they were not bound to increase Ms Earle's salary. The sentence *"There is no obligation on the EHRC to increase the level of your basic salary at review"* was key to the EAT's decision.

¹ The Equality and Human Rights Commission v Earle UKEAT/0011/14:
http://www.bailii.org/uk/cases/UKEAT/2014/0011_14_0406.html

Entire agreement clause

Ms Earle also argued that the comment made by the HR officer during the recruitment process was “*not merely a casual comment*” (i.e. that the comment was meant to affect the contract of employment). However, the contract of employment contained an entire agreement clause which read as follows:

“This contract supersedes any previous oral or written agreement between the EHRC and you in relation to the matters dealt with within it.”

In this case, the HR officer’s comment had been made before the written contract of employment was issued to Ms Earle. Therefore, the EAT ruled that the conversation between Ms Earle and the HR officer could not affect the contract and that the entire agreement clause was binding.

Comment

When recruiting, employers should always be careful about the verbal assurances that are given to prospective employees to reduce the risk of employees later arguing that they relied on such assurances. Employers should also always ensure that contracts of employment contain an entire agreement clause, which will generally be effective to ensure that the contract of employment supersedes all previous oral or written agreements, as occurred in this case.

If you would like assistance in drafting an employment contract or would like to have your employment contracts reviewed and updated, please contact a member of Rooks Rider Solicitors’ Employment team.

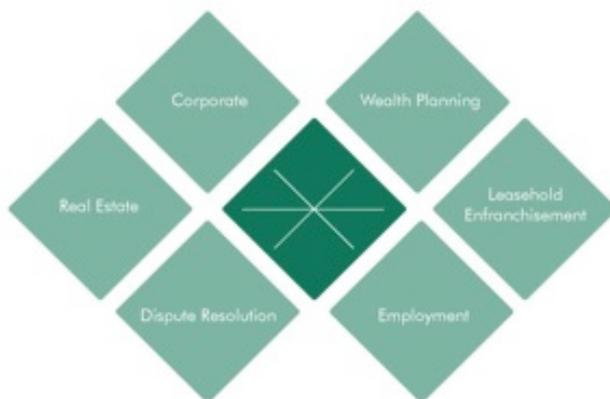
For further information or to discuss any of the issues raised in this briefing note, please contact a member of Rooks Rider Solicitors' Employment team:



Amanda Pullinger
Senior Associate - Head of
Dispute Resolution and
Employment
apullinger@rooks rider.co.uk
+44 (0)20 7689 7180



Aaron Heslop
Solicitor
Dispute Resolution and
Employment
aheslop@rooks rider.co.uk
+44 (0)20 7689 7209



Rooks Rider Solicitors LLP
Challoner House
19 Clerkenwell Close ■ London ■ EC1R 0RR

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