



# Integrated care and staff mobility FAQs

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## Place of work and mobility clauses

### **Why is staff mobility an important issue in integrated care?**

Integrated care is central to the government's approach to improving the health service for patients. The provision of shared services between various NHS organisations requires the portability of NHS staff between organisations and so it is vital at the outset of collaboration projects to consider the terms of an employee's contract in respect to their place of work and any flexibility which exists regarding mobility. For the purposes of this guidance note, we refer to an employee's substantive employer as the 'Employing Organisation' and the organisation at which they will provide services under a shared workforce arrangement as the 'Host'.

### **What is a mobility clause?**

Each contract of employment/statement of terms will set out an employee's place of work. This will usually refer to the employer's main location. Where an employee is required to work either at another site within the Employing Organisation or for a Host, flexibility within the contract (via a mobility clause) is required to change the place of work.

### **Does it involve TUPE?**

No. It must be remembered that portability is to be distinguished from a TUPE scenario where the employer changes – portability is simply about a change to the place of work; the employer remains the same.

### **Do you need to check for mobility clauses?**

Yes. Where organisations are discussing a shared services model of care, the current contracts of employment at all the organisations involved should be assessed in order to establish whether they contain sufficient flexibility to accommodate the movement of staff.

### **Do all mobility clauses look the same and does it matter?**

Some contracts contain express mobility clauses which give an employer the freedom to request that an employee provides services at a location other than the place of work, or alternatively no work place is given and the employee can be required to work at any site. There is no legal requirement that the place of work clause or any mobility clause must be reasonable, but employers must exercise such clauses so as to avoid undermining the mutual term of trust and confidence which is implied into all contracts of employment. This would involve, for example, providing employees with sufficient notice of a move.

## What happens if there isn't a mobility clause?

The absence of an express mobility clause does not automatically prevent an employer from moving staff to another site or asking them to carry out services at another organisation. In every contract of employment there is an implied duty on the employee to be adaptable and a move to another site or organisation may fall within this duty if it is within a reasonable travelling distance of the employee's home, particularly if the role will involve a significant amount of working from home. Where the move is deemed to fall outside the implied term of adaptability, a unilateral move could amount to a fundamental breach of the contract of employment which could allow the employee to treat him/herself as constructively dismissed.

## Can I add a mobility clause to an existing contract?

Where the current contracts of employment do not contain sufficient flexibility, or the adaptability clause cannot reasonably be relied on, any change to the place of work will involve a variation to the terms and conditions of employment. Variations can be achieved in a number of ways such as collective agreement, individual agreement or, as a last resort, dismissal and re-engagement. A fair process must be followed when implementing a change.

## Do unions push back on mobility clauses?

Unions are wary of widely drafted mobility and place of work clauses and we are aware that they are concerned about the impact of such clauses on their members in terms of suitable alternative employment in a redundancy context and as regards travel expenses.

The provisions of AfC at section 17 regarding travel expenses, for example, rely on the principle of a 'work base' for calculating mileage claims. No travel expenses are payable for travel to and from home and a work base. In a shared services model, where employees could be asked to travel direct from home to a Host, a widely drafted clause where that Host becomes a work base could lead to significant savings as compared to a scenario where expenses are incurred for all travel in excess of that to and from home and the Employing Organisation.

However, the ability of the CCG to negotiate very widely drafted mobility clauses will depend to a great extent on local union relationships and agreement to a wide clause is likely to prove difficult to achieve. Of course, this does not prevent the CCG from implementing a wide mobility clause for new joiners.

Please do contact us if you would like assistance reviewing or drafting mobility clauses to suit the changing needs of your organisation.

*For more information please contact:*




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