Appeal No. UKEAT/0265/16/DM

# EMPLOYMENT APPEAL TRIBUNAL

FLEETBANK HOUSE, 2-6 SALISBURY SQUARE, LONDON EC4Y 8AE

At the Tribunal
On 2 November 2017
Judgment handed down on 21 November 2017

**Before**

## THE HONOURABLE MR JUSTICE LAVENDER

**(SITTING ALONE)**

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GUVERA LIMITED — APPELLANT

(1) MS C BUTLER AND OTHERS
(2) BLINKBOX MUSIC LIMITED (IN LIQUIDATION)
(3) BB MUSIC HOLDINGS LIMTED (IN ADMINISTRATION) — RESPONDENTS

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Transcript of Proceedings

JUDGMENT

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## APPEARANCES

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| For the Appellant | MR DAVID READE<br>(One of Her Majesty's Counsel)<br>Instructed by:<br>Morgan Lewis & Bockius<br>Condor House<br>5-10 St Pauls Churchyard<br>London<br>EC4M 8AL |
| For Ms C Butler and 12 other individual Respondents | MR JASON GALBRAITH-MARTEN<br>(One of Her Majesty's Counsel)<br>Instructed by:<br>Bates Wells Braithwaite LLP<br>10 Queen Street Place<br>London<br>EC4R 1BE |
| For himself and 59 other individual Respondents | MR JONATHAN DAVID EDWIN WRIGHT<br>(The Respondent in Person) |
| For the remaining individual Respondents | No appearance or representation by or on behalf of the Respondents |
| For the Second Respondent | No appearance or representation by or on behalf of the Respondent |
| For the Third Respondent | No appearance or representation by or on behalf of the Respondent |

**SUMMARY**

**TRANSFER OF UNDERTAKINGS - Transfer**

An appeal against the Employment Tribunal's decision that there was a **TUPE** transfer under regulation 3(1)(a).

The appeal was dismissed because: (1) the grounds of appeal for which leave had been granted were not pursued; and (2) the submissions actually advanced did not disclose any error of law on the part of the Tribunal.

**THE HONOURABLE MR JUSTICE LAVENDER**

**(1) Introduction**

1. Guvera Limited ("Guvera") appeals against the Judgment of an Employment Tribunal (Judge Auerbach, sitting alone) sent to the parties on 20 June 2016. The Tribunal held that there was a relevant transfer ("a transfer"), for the purposes of the **Transfer of Undertakings (Protection of Employment) Regulations 2006** ("the Regulations"), of Blinkbox Music Business ("the Business") to Guvera on 12 May 2015.

2. The Respondents to this appeal consisted of:

(1) 79 individuals who were formerly employed in the Business. 13 of them were represented at the hearing by Mr Galbraith-Marten. Another 60 were represented by one of their number, Jonathan David Edwin Wright, who adopted Mr Galbraith-Marten's submissions. The remaining 6 did not appear and were not represented, although 4 of them had submitted answers indicating that they intended to resist the appeal.

(2) Blinkbox Music Limited ("Blinkbox"), which was the employer of the individual Respondents prior to the disputed transfer. Blinkbox went into administration on 11 June 2015 and is now in liquidation. Its liquidators indicated that they were happy to abide by the decision of the Employment Appeal Tribunal.

(3) BB Holdings Limited ("BB"), which: (a) is a subsidiary of Guvera; (b) was from 23 January 2015 the parent company of Blinkbox; and (c) was formerly known as Guvera UK Limited. Like the Tribunal, I will refer to it as Guvera UK. It did not play any part in the hearing before the Tribunal and it did not play any part in this appeal. Indeed, I was told that it has been dissolved.

3. The Tribunal's conclusions that there was a transfer and that it took place on 12 May 2015 were obviously of considerable significance for the individual Respondents. Awards of damages have been made in their favour. I am told that these amount to about £3.5million in total. They have not yet been paid, given the existence of this appeal.

**(2) The Facts**

4. The Tribunal set out what Mr Reade rightly described as a comprehensive recital of the facts in paragraphs 11 to 135 of its Judgment. Having addressed the law in paragraphs 136 to 152, it then set out its further findings and conclusions in paragraphs 153 to 190. Only a brief summary of the facts is necessary for the purposes of this appeal.

5. The Business was first established in 2007. It provided a music streaming service in the United Kingdom. The Business was carried on by Blinkbox. Blinkbox was acquired by Tesco in 2012, but by January 2015 Tesco wanted to sell Blinkbox. At that time, the Business was Blinkbox's only business and there were over 110 employees of Blinkbox working in the Business.

6. On 23 January 2015 Guvera UK bought the shares in Blinkbox. Michael de Vere, who was a director of Guvera based in the United Kingdom, arranged the purchase and became the sole director of Blinkbox. It is important to note that Guvera's CEO and Chairman, Darren Herft, considered that Mr de Vere had acted without authority and without completing proper due diligence.

7. The Tribunal divided the events thereafter into three time periods:

(1) The first period was from 23 January to the end of April 2015: see paragraphs 154 to 159 of the Tribunal's Judgment. The Tribunal found that there was no transfer during this period. The Business remained with Blinkbox, under the directorship of Mr de Vere, who had been given 90 days by Mr Herft to turn the Business round.

(2) The second period was from the end of April to 11 May 2015, when Mr de Vere resigned as a Director of Blinkbox: see paragraphs 160 to 163 of the Tribunal's Judgment. Insolvency was in prospect for Blinkbox, and Guvera was considering its options and was interested in acquiring Blinkbox's assets and about 20 employees. However, the Tribunal found that there was no transfer during this period, as the Business remained "under the control of Blinkbox, Mr de Vere as its director and its own senior management team".

(3) The third period started on 12 May 2015, when Damien King, Guvera's Chief Technical Officer, arrived at Blinkbox following Mr de Vere's departure, and continued until Blinkbox went into administration on 11 June 2015: see paragraphs 164 to 190 of the Tribunal's Decision. The Tribunal found that there was a transfer at the start of this period, when Guvera assumed day to day control of the Business, in a way that went beyond the mere exercise of ordinary supervision or information gathering between parent or subsidiary.

8. It was Mr Herft who sent Mr King and two others to London. The Tribunal set out his instructions to Mr King, which were sent by email on 9 May 2015. These included the following:

(1) It was Mr Herft's intention that "we restructure next week".

(2) Guvera's goal was to buy the assets of Blinkbox "without triggering major HR issues".

(3) Mr King was to find a way to work with the best 14 technical and product staff and 6 "admin, finance, sales, reception etc" staff.

(4) Mr King was told, "Don't let de Vere tell you who to keep and what you should do". (Mr de Vere was at this time still Blinkbox's sole director.)

(5) Mr Herft said that he was going to remove Mr de Vere. (In fact, Mr de Vere resigned before he could be removed.)

(6) Mr King was told to find out if Miklos Parrag (one of the senior managers of Blinkbox) "will comply" and, if not, to indicate that "we will be terminating his position when we restructure next week" and then to take the same approach with each next senior person in turn. Mr Herft added, "Miklos will report to you if he stays - if he doesn't like it he can leave".

(7) Mr King was to meet with Juliet Carp of the solicitors, Dorsey & Whitney. (Mr King first did so on 11 May 2015, before he went to Blinkbox's offices.)

(8) Mr Herft wanted advice as to how he, as a director of Guvera, could see the general ledger of Blinkbox and, specifically, every payment out in the last 60 days.

9. The Tribunal described the events of 12 May 2015 in paragraphs 60 and 61 of its Judgment, as follows:

> **"60. On Tuesday 12 May 2015 Mr King went to the Blinkbox Music offices in London and met various staff. He emailed Mr Anderson asking him to provide to Mr Herft how much cash in bank, last three bank statements and accounts payable. Mr King also reported that about a dozen staff were in the London office as Mr de Vere had suggested they work from home. Mr Herft asked is Mr Parrag was there and added: "If he wants to keep his job tell him to come in & email me what I need." Mr King contacted Mr Parrag who responded that he did not know Mr King was coming in that day but offering Skype or to take a call.**
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> **61. Mr Anderson emailed Mr Herft the information he required. In a reply Mr Herft commented: "I think it is best no payments are made at this point & we meet with the liquidators today or tomorrow to discuss options." He indicated that Guvera had funds to**

> **invest/loan across to BB but needed to work out best way forward with lawyers and liquidators and "how we immediately cut burn rate (which should have happened more aggressively 90 days ago).""**

10. It is plain from these paragraphs that Mr King was implementing his instructions from the very start. On 12 and 13 May 2015, Blinkbox did not have any directors. On Thursday 14 May 2015 Mr Herft caused Paul Chalk, an accountant, to be appointed as sole director of Blinkbox. Mr Chalk was to be described (by Brad Christiansen of Guvera) as a "paper director". The Tribunal found that Mr Chalk did, indeed, act as a "paper director".

11. On Friday 15 May 2015 54 employees of Blinkbox (including Mr Parrag) were made redundant. The Tribunal found that Mr King "was in charge of, and took the effective decisions in relation to, that exercise, regarding how many redundancies would be declared, and who would stay". Moreover, in discussions about that exercise, his benchmark was the figures envisaged by Mr Herft.

12. In paragraph 83 of its Judgment, the Tribunal set out what happened on the next working day:

> **"83. On Monday 18 May 2015 Mr King spoke to the remaining Blinkbox employees in the London office. Mr Herft did not, in the event, prepare slides for him, but did speak to him beforehand. Mr King began: "This is day one people by the way, this is like a new team. So forget about everything in the past, leading forward, this is the first time you will be reporting up to the Guvera Global and the Guvera Headquarters …". He referred to Mr de Vere having failed to raise funding and achieve cost reductions within 90 days "[a]nd because of that, Guvera Limited, as the organisation, has decided to take Blinkbox into the fold under a different structure …"."**

13. Moreover, the Tribunal made the following finding in relation to this announcement in paragraph 182 of its Judgment:

> **"182. … Further, in announcing to staff that they were now part of Guvera, he was not announcing a change that had just been implemented that day, but, as it were, making official what had already taken place. …"**

14. Mr King left the United Kingdom on 19 May 2015, but was replaced by Mr Christiansen of Guvera, who first attended Blinkbox's offices on Tuesday 26 May 2015 and told the employees that he would be acting as CEO of both Blinkbox and Guvera UK. The Tribunal made the following finding about Mr Christiansen, in paragraph 184 of its Judgment:

> **"184. When Mr Christiansen arrived, on 26 May 2015, the plan was plainly that he was to be the effective chief executive of the Blinkbox Music business for an indefinite period to come (though not given that title), and that, through him, Guvera was to be seen as, openly, in charge. This was reflected in particular, in his own pronouncements to the workforce upon arrival. He also made a point of making clear that it was he, not Mr Chalk, who was in charge, and accurately described him as a paper director, going back to the reasons for his original appointment. I was not persuaded by his attempts, in cross-examination, to explain away that remark."**

## (3) The Tribunal's Directions on the Law

15. As I have said, the Tribunal dealt with the law in paragraphs 136 to 152 of its Judgment. It began by reciting the terms of regulation 3(1)(a) of the **Regulations**, which provides:

> **"a transfer of an undertaking, business or part of an undertaking or business situated immediately before the transfer in the United Kingdom to another person where there is a transfer of an economic entity which retains its identity;"**

16. No objection was taken to paragraphs 137 to 140 of the Judgment. In these paragraphs, the Tribunal correctly observed that:

(1) A sale of the share capital in a limited company does not, as such, amount to a transfer of an undertaking.

(2) The fact that one company is the wholly-owned subsidiary of another does not, of itself, mean that the parent controls the business of the subsidiary.

(3) However, these principles do not preclude a scenario in which, at the same time as, or following, a share sale, there is also a transfer of the undertaking in question, from the company which was the subject of the share sale to another company in the group which it has joined as a result of the share sale.

(4) "The governing principles when determining whether there has been a transfer of undertaking have been stated many times in the authorities. It is a multi-factorial test and no single factor is decisive either way. See, in particular, the **Spijkers** case [1986] ECR 1119."

17. The Tribunal quoted paragraphs 30 to 36 of the judgment of the Court of Justice of the European Communities in **Celtec v Astley** [2005] ICR 1409. The Tribunal then identified three points which it said emerged from the authorities and which were potentially of particular significance. These points were set out in paragraphs 143, 144 and 148 of its Judgment:

> **"143. Firstly, following a share sale, and the company in question joining a new group, a transfer will occur if, and when, another company in the acquiring group assumes control, in the requisite sense, of the business in question, whether or not assets of the business are acquired at the same time.**
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> **144. Secondly, a distinction, must, for these purposes, be drawn between the measure of practical influence or control which (without offending the legal principle in *Allen*) practically comes with being a parent company, and the greater degree of day to day control which must be assumed for a transfer of undertaking to occur. Whether, or when, this line has been crossed in a particular case is a fact-sensitive question for the appreciation of the Tribunal.**
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> **148. Thirdly, one needs to be alert to a potential ambiguity in the use of the word "responsibility". It is the acquisition of responsibility for the business, in the sense of sufficient control of the business, that will, if it occurs, lead to the inheritance of responsibility (in the sense of legal liability) for the employees in question. In *Housing Maintenance Solutions Limited v McAteer* [2015] ICR 87 (EAT) Slade J (at paragraph 46) put it, pithily, like this: "It is the assumption of responsibility by the transferee as employer for previous employees of the transferor by reason of the operation of TUPE which is referred to in *Celtec*. That assumption of responsibility occurs on the date of the transfer of the undertaking not vice versa.""**

18. In paragraphs 145 to 147 of its Judgment, the Tribunal referred to the case of **Millam v Print Factory (London) 1991 Ltd** [2007] ICR 1331 as an example of its second point and quoted from the judgments in that case of Buxton and Moses LJJ.

**(4) The Tribunal's Conclusions**

19. As I have said, the Tribunal set out its further findings and conclusions in relation to the third period in paragraphs 164 to 190 of its Judgment. It is relevant to note that the discussion

in those paragraphs concerned two inter-related questions, i.e. whether there was a transfer and, if so, when. Some of the argument on appeal focused on the way in which the Tribunal expressed its conclusions as to when the transfer took place. I was referred, in particular to paragraphs 164, 168 to 171, 185 and 190 of the Judgment. These state as follows:

> **"164. However, with Mr de Vere's abrupt departure, and upon the arrival in London of Mr King's delegation, the course in fact pursued and directed by Mr Herft, on behalf of Guvera, took a new turn, and the third period now began. In light of all my findings of fact, I concluded that, from this point on, Guvera was certainly concerned, and made efforts, to acquire de facto and day to day control of the key operations of Blinkbox going forward. This was done, in summary, for the following reasons.**
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> **168. My conclusion reflects my appraisal of the picture painted by all the facts and circumstances, and I will not attempt to restate them all, in this part of my decision. But I note, in particular, the following features of matters in this phase of things that began, effectively with Mr de Vere's departure and the arrival of Mr King's delegation in the UK.**
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> **169. Firstly, Mr Herft, from this point, not only sought to, but successively did, exercise influence over a number of key business decisions, particularly in relation to making, or not, of payments to creditors, key players such as PRS, and the all-important question of dialogue with the labels over renewal of the licences.**
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> **170. Secondly, steps were immediately taken to implement further redundancies on the sort of scale that Mr Herft envisaged would now have to be carried out. It was the figures envisaged by Mr Herft that were Mr King's, and Smith & Williamson's benchmark, in their discussions with the local senior management about that exercise.**
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> **171. Thirdly, it was clearly Mr King who was in charge of, and took the effective decisions, in relation to that exercise, regarding how many redundancies would be declared, and who would stay. He was dependent on information from the senior management team, and which had previously been compiled by Mr Parrag and Mr de Vere, but he chaired all the meetings, briefed Smith & Williamson and Mr Chalk, and was the effective decision maker.**
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> …
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> **185. Standing back, and looking at the bigger picture, these features, did, it seems to me, reflect a reality in which, from the start of this third period, Guvera *did* assume day to control [sic] of the business of Blinkbox, crossing a line beyond the element of de facto control, and information acquisition, which comes with being a corporate parent, in a way that amounted to taking over conduct of its day to day activities.**
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> …
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> **190. For all the foregoing reasons I have concluded that, in the wake of Mr [de Vere's] resignation, and effectively from the moment of Mr King's arrival in the London office on 12 May 2015, following Mr de Vere's departure from the scene, Guvera assumed day to day control of the Blinkbox Music business, in a way that went beyond the mere exercise of ordinary supervision or information gathering between parent and subsidiary, and crossed the legal line identified by the Court of Appeal in *Millam*."**

## (5) The Grounds of Appeal

20. When this appeal was commenced, Guvera relied on a number of grounds of appeal drafted by counsel who had represented Guvera before the Tribunal. Following a Preliminary

Hearing before HHJ Eady QC on 6 February 2017, the only grounds on which Guvera had permission to appeal were as follows (with numbers added for convenience):

> **"(1) The point of law is that the Tribunal misdirected itself on the law by focusing on the degree of control said to be exercised by the Appellant over the Second Respondent rather than focusing on the true question as to whether control had actually passed from the Second Respondent to the Appellant. (2) Further and in the alternative, a transfer based on 'assuming control' requires precise findings of fact as to the point of 'transfer' and the degree of 'control' that is exercised. The Tribunal failed to identify with any precision and as a result erred as to the date the transfer took place."**

21. HHJ Eady gave Guvera leave to amend the Notice of Appeal "so as to set out only the Grounds of Appeal" for which permission had been granted. A Notice of Appeal was drafted which set out the two grounds and added a few paragraphs in explanation of them.

## (6) The First Ground of Appeal

22. Mr Reade (who did not represent Guvera before the Tribunal) advanced two propositions under the head of ground 1:

(1) He submitted that, by focusing on the issue of control in paragraphs 143 and 144 of its Judgment, the Tribunal wrongly excluded the other factors which were relevant to the "multi-factorial test" established in the **Spijkers** case.

(2) He submitted, in particular, that the Tribunal wrongly failed to appreciate that it is a necessary condition for a transfer that the transferee has assumed some of the responsibilities of an employer towards the employees of the undertaking.

23. However, neither of these submissions fell within the scope of the first ground of appeal. Indeed, Mr Reade's submissions contradicted the first ground of appeal. The first ground of appeal said that the Tribunal should have focused on whether control had actually passed from Blinkbox to Guvera. But Mr Reade submitted that:

(1) the Tribunal was wrong to focus on the issue of control; and

(2) by focusing on the issue of control, the Tribunal had ignored a necessary condition of a transfer.

24. In truth, Mr Reade did not advance any arguments in support of the first ground of appeal. That is sufficient to dispose of that ground. In the circumstances, I need not dwell on the submissions which Mr Reade did advance. I should record, however, that I saw no merit in them. I say this for the following reasons.

25. The Tribunal correctly recognised that the test of whether there has been a transfer is a multi-factorial one and that no single factor is decisive either way. The Tribunal referred to the **Spijkers** case. As Mr Reade acknowledged, the relevance of individual factors will vary according to the circumstances of the case. For example, in the present case, Mr Reade accepted that there was no issue as to the identity of the undertaking (which meant that dicta in other cases, where that was the central issue, need to be treated with some care). The Business remained the same before, as well as after, the disputed transfer. In that context, it was right for the Tribunal to say that the three points which it identified were "potentially of particular significance in this case".

26. Mr Reade's argument that focusing on control led the Tribunal to ignore other factors inevitably leads to the question: what other factors did the Tribunal fail to address which were significant in the context of this case? The only such factor which Mr Reade identified was the question whether Guvera assumed the obligations or responsibilities of an employer towards the employees of the Business.

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27. On the Tribunal's findings, Guvera certainly assumed the rights or powers of an employer towards the employees of Blinkbox. Even on 12 May 2015, Guvera, acting by Mr King, was assuming the powers of an employer, telling Mr Anderson to provide financial information to Mr Herft (who then said that the Business should make no payments at this point) and contacting Mr Parrag in response to Mr Herft's instruction to tell Mr Parrag "if he wants to keep his job … to come in and email me what I need". By 15 May 2015, Guvera, acting by Mr King, had got to the stage of making most of the employees redundant.

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28. Mr Reade submitted that, nevertheless, there could not be a transfer unless Guvera also assumed the responsibilities of an employee (e.g. by paying the employees' wages). This is an unattractive submission. It is reminiscent of Stanley Baldwin's phrase from the 1931 election campaign: "power without responsibility - the prerogative of the harlot throughout the ages"[1]. More prosaically, and more pertinently, it seems to be inconsistent with the policy underlying the Regulations and the Directive which they implement. If the law was as Mr Reade contended, a company which took control of an undertaking, exercised the powers of the employer over the employees in the undertaking and, in particular, chose to make most of them redundant could say, "But the Regulations do not apply to me, because I did not pay your wages". That would be a surprising result.

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29. I find no support for Mr Reade's arguments in **Millam**. It is true that in that case the company (McCorquodale) which acquired the shares in the company (Fencourt) which carried on the relevant undertaking did pay the wages of the employees of the undertaking and managed their pension scheme. Those facts were noted in paragraph 5 of the judgment of the Employment Appeal Tribunal: [2006] IRLR 923. But those facts were not referred to again by

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[1] I am grateful to Mr Reade for pointing out that Mr Baldwin may have been quoting an exchange between Lord Beaverbrook and Rudyard Kipling: see *Baldwin Papers: A Conservative Statesman, 1909-1947* (CUP, 2004) ed. Williamson, p. 258, fn. 59.

A the Employment Appeal Tribunal and were not referred to at all by the Court of Appeal. Despite Mr Reade's ingenious submissions, I cannot read the judgments in **Millam** as according those facts a decisive role. Those judgments focus instead on the Tribunal's finding of fact that the activity of the undertaking was being carried on by McCorquodale, not by Fencourt. The Tribunal was correct to regard that case as an example of its second point, set out in paragraph 144 of its Judgment.

C 30. Nor do I see any error in paragraph 148 of the Tribunal's Judgment. The Tribunal referred to a potential ambiguity in the use of the word "responsibility". The Tribunal must have been referring to the use of that word in paragraph 36 of the judgment in **Celtec**, which the D Tribunal had quoted. That is the paragraph which was analysed and explained by Slade J in the Employment Appeal Tribunal in **Housing Maintenance Solutions Ltd v McAteer** [2015] ICR 87. The Tribunal in this case correctly summarised what Slade J said.

E 31. Finally, I do not accept that any of the cases to which I was referred establish that it is a necessary condition of a transfer that the transferee has assumed the obligations of employer towards the employees of the undertaking. There is potential for ambiguity here (which Slade J F addressed in paragraph 40 of her judgment in **Housing Maintenance Solutions Ltd v McAteer**):

> (1) It is undoubtedly one of the consequences of a transfer that the transferee G assumes the obligations of employer. The following sentence from paragraph 12 of the judgment of the Court of Justice of the European Communities in the case of **Landsorganisationen i Danmark v Ny Mølle Kro** (Case 287/96) [1989] ICR 330 has been much cited (although the emphasis is mine):
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> H **"12. … The Directive is therefore applicable where, following a legal transfer or merger, there is a change in the legal or natural person who is responsible for**

**carrying on the business and who by virtue of that fact incurs the obligations of an employer vis-à-vis employees of the undertaking, …"**

(2) One relevant factor in deciding whether there has been a transfer may consist of action taken by the transferee, such as the payment of wages, which could be described as assuming the obligations or responsibilities of the employer. This is to be considered as one factor in the multi-factorial test.

(3) But it is not a necessary condition for a transfer that the transferee has acted in such a way. No decided case, properly understood, supports such a conclusion. Indeed, to elevate one factor to the status of a necessary condition for a transfer would be inconsistent with the concept of the multi-factorial test, where no single factor is decisive. It would also risk undermining the policy underlying the **Regulations**, as I have said.

32. The high-water mark of Mr Reade's submissions was to be found in paragraph 83 of Garnham J's judgment in **ICAP Management Services Ltd v Berry** [2017] EWHC 1321, which stated as follows:

**"83. What, in my judgment, emerges from the CJEU cases of *Berg v Besselsen* and *CLECE SA v Martin Valor*, cited above and from the Court of Appeal's decision in *Millam* is that the critical elements of the test are whether the new party (i) has become responsible for carrying on the business, (ii) has incurred the obligations of employer and (iii) has taken over day to day running of the business. It seems to me that those elements of the test can be captured in more colloquial terms - "Has the new party stepped into the shoes of the employer?""**

33. The present case is one in which, on the Tribunal's findings, Guvera "stepped into the shoes" of Blinkbox. I do not accept that Garnham J was intending to lay down a rule that any or all of the three "critical elements of the test" which he identified were necessary conditions of a transfer, rather than merely identifying important aspects of the multi-factorial test. If he had intended to make such a radical departure from the multi-factorial approach, he would surely have spelt that out in much clearer terms.

**(7) The Second Ground of Appeal**

34. Guvera's second ground of appeal was that the Tribunal failed to identify with any precision, and as a result erred as to, the date the transfer took place. In fact, it is clear that the Tribunal did identify with precision the date on which the transfer took place. It was 12 May 2015: see, in particular, paragraph 190 of the Tribunal's Judgment. (Some of the language used by the Tribunal, e.g. in paragraphs 164 and 168 of its Judgment, could be read as speaking of 12 May 2015 as the beginning of a process by which Guvera assumed day to day control of the Business, but other paragraphs are clearer that control passed on 12 May 2015.) Mr Reade did not suggest otherwise. Indeed, his skeleton argument began with an acknowledgement that the Tribunal held that there was a transfer on 12 May 2015.

35. Instead, Mr Reade's argument was that the Tribunal's findings of fact did not support a conclusion that the transfer took place on 12 May 2015. This is, in effect, an argument that the Tribunal's conclusion was a perverse one which no reasonable Tribunal could have reached. But Guvera did not have permission to advance such an argument.

36. Again, that is sufficient to dispose of the second ground of appeal, but I add for the sake of completeness that, even if Mr Reade had been entitled to advance this argument, I would have dismissed it. I have already referred to the Tribunal's findings as to Mr Herft's instructions to Mr King and as to what Mr King and Mr Herft did on 12 May 2015. Mr Herft's actions on that day were among the matters referred to by the Tribunal in paragraph 169 of its Judgment when setting out its reasons for concluding that control had passed. I am satisfied that the Tribunal's findings of fact were capable of supporting its conclusions as to when Guvera assumed control of the Business and, consequently, as to when the transfer took place.

**(8) Conclusion**

37. For these reasons, I dismiss this appeal. In doing so, I express my gratitude to the counsel and solicitors on both sides for their efforts in the preparation and presentation of this appeal, which greatly assisted my task.