



EMPLOYMENT TRIBUNALS

Claimant: Mr P Brunton

Respondents: Denbighshire County Council (R1)
Gwynedd County Council (R2)

Heard at: Mold **On:** 2 & 3 October 2017

Before: Employment Judge T Vincent Ryan (sitting alone)

Representation:
Claimant: Mr. G. Pollitt, Counsel
R1: Mr. D. Bunting, Counsel
R2: Mr. G. Edwards, Solicitor

RESERVED JUDGMENT

The Judgment of the Tribunal is there was not a transfer of an undertaking on 1st April 2016 when Gwynedd County Council “in-sourced” the custodianship of single carriageway trunk roads in north and mid-Wales, which activity had been carried out until that date by Denbighshire County Council amongst others. The claimant’s contract of employment did not transfer from the first respondent to the second respondent by virtue of The Transfer of Undertakings (Protection of Employment) Regulations 2006.

REASONS

1. **The Issues:** R1 says that the claimant transferred automatically to R2 upon a service provision change; R2 denies that there was such a transfer. The issues to be determined were:
 - 1.1 Whether activities (specifically, “custodianship” of single carriageway trunk roads passing through the county of Denbighshire) ceased to be carried out by R1 on behalf of R2 for the North and Mid Wales Trunk Road Agency (NMWTRA) (R2 and NMWTRA being jointly “the

client”) and are carried out by NMWTRA through R2 instead on its own behalf; notwithstanding the involvement of both NMWTRA and R2 the parties all agreed that for our purposes they were interchangeable and that the situation described is one of “in-sourcing”;

- 1.2 Whether immediately before the service provision change described above there was an organised grouping of employees situated in Great Britain which had as its principal purpose the carrying out of the activities (single carriageway custodianship) on behalf of the client.

2. The Facts

- 2.1 Background: In his ET1 claim form the Claimant says he commenced his employment with R1 on 1 January 1996. In its ET3 Response R1 says that the Claimant’s employment with it started in 1980. I heard no evidence on these dates and make no finding as to the claimant’s commencement date with R1. On 1 April 2014 the Claimant commenced a role with R1 entitled “North and Mid Wales Trunk Road Agency (NMWTRA) Maintenance Manager”. His letter of appointment is at page 66 of the trial bundle to which all further page references refer; his job description is at pages 67 to 70. NMWTRA (“the Agency”) is described below. The Claimant was described as the Agency’s Maintenance Manager in R1’s Work Unit Structure dated March 2014. That plan shows the Claimant as being responsible for planned, cyclical, maintenance. He reported to the Works Unit Manager, Mr A Clarke. Findings in respect of the Claimant’s duties are set out below. The Claimant resigned from his position with R1 claiming constructive unfair dismissal on 28 March 2016 and following a selection process he commenced his employment with R2 on 1 April 2016 carrying out functions for the Agency.

2.2 Terminology

- 2.2.1 PA: Partnership Authority, being a local Highways Authority working in partnership with the Agency; they are described in more detail below (2.5). At the material times, the PAs were Gwynedd (R2), Ynys Mon, Conwy, Denbighshire (R1), Flintshire, Wrexham, Ceredigion and Powys.
- 2.2.2 Client Work: this is where work was done by a PA for the Agency via R2.
- 2.2.3 Technical administration: This is work carried out for and funded by the Agency via R2. This is where work was carried out by a PA as a contractor for the Agency/R2; this relates to how R1 as

a Partner Authority delivered the requirements of the Agency as specified and directed by R2 and how it was accounted for and funded.

2.2.4 Work Unit: This is the internal description used by PAs to record work carried out by its operatives and contractors for the PA; it relates to internal works using the operatives employed by each PA or their contractors.

2.2.5 Payment mechanisms: Payments were claimed and made by PAs by three mechanisms:

2.2.5.1 A Schedule of Rates: this was for PA routine and reactive maintenance work which varied according to the work undertaken. It was supplemented in respect of fixed costs (for the use of depots and the like) by a fee representing 11% of turnover with a safety net such as when turnover was unusually low (as could happen when a mild winter reduced the need for significant reactive work on the highways).

2.2.5.2 Technical Administration: this related to time charges payable to PAs by the Agency for undertaking work for it that was specified in a Service Provider Schedule (a service delivery agreement, as it is now called).

2.2.5.3 Engineering Consultancy: consultancy work carried out by PAs for the Agency was paid by a mixture of fixed and time costed fees.

2.2.6 Route custodian function: The custodian is responsible for the identification of work that is to be carried out on trunk roads, and the raising of an order for the carrying out of that required work. The custodian commissions work; it identifies maintenance work requirements and gives instructions to PAs to perform it to agreed specifications. The custodian does not procure the required labour and resources or manage them. Prior to 1st April 2016 the PAs were the custodians of single carriageway trunk roads in their respective counties, and R2 was the custodian of dual carriageway trunk roads in all counties. As the custodian of dual carriageway trunk roads R2 would identify required work and commission a PA to carry it out on a geographic basis; R2 acting for the Agency would be at one remove from the practical repair and maintenance work being carried out on, say, trunk dual carriageways in Denbighshire where instructions had been given to R1 as the geographically appropriate PA. Prior to 1st April 2016 where a PA was the custodian of single carriageways it would identify required work and additionally undertake the

required work either using its own direct labour force or contractors under its supervision; the PA both identified required work and saw to the practical completion of repairs and maintenance of single carriageway trunk roads such that its role was more “hands on” in respect of single carriageways than R2’s role was in respect of dual carriageways. A PA would effectively also act as custodian and operative in respect of its county roads (non-trunk roads).

2.2.7 Reactive and programmed; some repair and maintenance work is required because on inspection there were deficiencies in the road surface or crash barriers and the like; this was called “reactive work”. “Programmed work” is as the name suggests.

2.3 The Agency is responsible for maintenance, repair and related matters in respect of trunk roads passing through the counties of North Wales and Mid Wales, specifically for our purposes and those of R1, the A55, the A5, and the A494. The Agency’s work is distinguished from a county’s Highways Department’s dealings with “county roads”; county roads are the other A roads, B roads and the like (but not trunk roads) passing through the various counties comprising North and Mid Wales. With regard to county roads a PA was the responsible authority in all respects, similar to its responsibilities with single carriageway trunk roads prior to 1st April 2016, namely to inspect, to identify required work and to see (“hands on”) to its completion.

2.4 R1

2.4.1 R1 is the Local Highway Authority for Denbighshire across which traverse the three major trunk roads in question (A55, A5 and A494). They cross a number of counties in North and Mid Wales including Denbighshire. Prior to 1st April 2016 it was the custodian of single carriageway trunk roads but not dual carriageway trunk roads; it was and remains responsible for its county roads in all respects.

2.4.2 Andrew Clarke is R1’s Works Unit Manager, Highways and Environmental Services Department. He was responsible at all material times for the management of projects and maintenance in respect of relevant trunk roads passing through Denbighshire, amongst other duties including in relation to county roads. Mr. Clarke’s evidence was to the effect that the claimant transferred from R1 to R2 on 1st April 2016 because for all practical purposes R2 required the claimant, or someone, to carry on doing the same work that occupied most of the claimant’s time

at R1 and that any distinction is effectively a matter of semantics based on artificial accounting practices and distinctions.

2.4.3 Stephen Parker was the former Head of Highways and Engineering Services for R1. He concurred with Mr. Clarke.

2.5 R2

2.5.1 R2 is the Highway Authority for Gwynedd, across which county the A5 and A55 trunk roads pass. R2 is the Lead Authority for the Agency, a Regional Agency working on behalf of the Welsh Government in maintaining the trunk road network across North and Mid Wales. The trunk roads, or some of them, pass through eight counties whose county councils are referred to as Partnership Authorities (PAs); there is a separate and distinct Agency for South Wales' trunk and county roads. As far as North and Mid Wales is concerned the PAs work with and for R2 in respect of trunk roads passing through their respective counties, and R2 assumes, to all intents and purposes, the identity of the Agency.

2.5.2 David Cooil was Head of Services for the Agency and was employed by R2. Mr. Cooil gave evidence to the effect that R2 in-sourced custodianship of single carriageway trunk roads on 1st April 2016 but that there was no organised grouping of employees carrying out that work previously and only a relatively small proportion of the claimant's time and work whilst employed by R1 was in-sourced by R2; the claimant's role and duties were very different post-1st April 2016 after his "recruitment" by R2.

2.5.3 Mark McNamara is employed by R2 as Delivery and Inspection Unit Manager for the Agency. He is responsible for delivery of the Welsh Government's capital funded projects and delivery of inspection functions in accordance with the Welsh Government's manual. His evidence was to the same effect as Mr. Cooil; the claimant agreed with them.

2.6 Structure

2.6.1 The Agency operates under a partnership agreement with the eight PA's.

- 2.6.2 The Agency agreement with the Welsh Government appoints R2 as the Lead Authority for delivery of services to the Welsh Government.
- 2.6.3 There is a Service Delivery Agreement (SDA) (formerly Service Provider Schedule (SPS)). The SPS and then subsequently the SDA provided for the delivery of services by PAs to the Agency (via R2).
- 2.6.4 Certain functions, such as carrying out inspections, are carried out in accordance with the Welsh Government's Trunk Road Management Manual.
- 2.6.5 In respect of trunk roads the Agency and R2 (the terms being practically interchangeable in this context) were the joint clients of the PAs; in this context "in-sourcing" is a reference to R2 taking matters in-house and back from PAs, albeit in its role as Lead Authority for the Agency.
- 2.6.6 In 2014/15 the Welsh Government, the Agency and R2 were concerned about financial accountability within the PA's, value for money for the Welsh Government, austerity cuts and the possibility of the Agency being privatised. In consequence there was a move from lump sum payments by the Welsh Government via the Agency to PA's to an alternative payment system based on strict time recording by PAs using prescribed codes for items of work, with due apportionment of work and scrutiny of time spent doing that work by R2. The second consequence of the stated concern was a ministerial proposal to maintain the Agency's services in the public sector. In respect of the latter R2 was to lead on measures to retain the Agency in the hand of PA's funded by the Welsh Government. This proposal led directly to an exercise to enhance the role of the Agency on the basis of information gained in part from the said time recording data. Part of this enhancement was the in-sourcing of most technical administrative functions by R2, including inspection of trunk roads and custodianship of single carriageway trunk roads.
- 2.6.7 In Denbighshire R1 operated a "twin hatted" approach in respect of single carriageway trunk roads, both commissioning work as if R1 was the "client" and also managing the work. Its staff were not assigned to one or other role distinctly and specifically but operated across both functions as they did in respect of its county roads.

- 2.7 Prior to 1st April 2016 delivery of trunk road works in general comprised:
- 2.7.1 Trunk road - Single carriageway: where R1 had the route custodian function described above and under its twin hatted approach it also saw to management of the work without assigning its employees to either individual area of work exclusively but rather to both;
 - 2.7.2 Trunk road - Dual carriageway: where the Agency had the custodian function commissioning work from PAs and the PAs managed delivery;
 - 2.7.3 Design: where there were consultancy briefs such as with regard to vehicle retention (crash barriers) and major surfacing design work;
 - 2.7.4 Winter maintenance & forecasting: this included out of hours duty officer work; it was required in respect of both the county and trunk road networks.
- 2.8 The Claimant would perform his duties, including all four of the elements described in 2.7 above, and time record them using codes signifying the nature of the work, whether he was working directly for the Agency (Client Work or Technical Administration) or directly for R1 (Works Unit).
- 2.9 Until this point it appeared that the Agency was paying R1 for the Claimant's work considerably more than an hourly rate equating to 1600 hours per year; the Agency was paying R1 142% of the Claimant's wage. Reluctantly R1 agreed with R2 that A should pay 101% of the cost to it of the Claimant's wages for 1600 hours per annum. There is no dispute between the parties that the cost of the claimant to R1 WAS paid ultimately by the Agency through one or other payment mechanism through which R1 (his employer and the party responsible for the payment of his wages) reclaimed its costs; there is no dispute that the Claimant spent most of his working hours on the A55 dual carriageway (where the Agency/R2 was the custodian raising orders for work from R1 as the relevant PA; the claimant fielded those orders, sourced and dealt directly with operatives and oversaw the completion of works on site for R1). Most of the claimant's time therefore involved hands-on management of the procuring, managing, supervising and reporting of work carried out by R1 on the A55 dual carriageway trunk road. He time recorded that activity using R2s codes. At times errors were made in time recording and I accept Mr. McNamara's evidence as to the true

position as he set it out in his witness statement on the basis of his analysis of available data.

2.10 R2 (acting as and for the Agency (“the client”)) in-sourced most Technical Administration functions including inspection and single carriageway custodian functions. It did so because a relatively small proportion of a high number of staff at the PA’s were involved in this work such that in-sourcing and using direct employees of R2 would be more efficient. Approximately ninety six people were employed across the PAs in question who were involved in some aspect of Area Custodianship duties as part of their jobs in respective highways’ authorities; they had other duties and responsibilities in respect of county and trunk roads too. Of that number approximately sixteen people were employed by R1, including the claimant. R2’s figures based on its time records show that 14% of the Claimant’s time was spent on single carriageway work and I accept that figure on the basis of the evidence before me. The Claimant was responsible to identify required work on single carriageways. The Claimant oversaw R2’s employees or their sub-contractors carrying out work on dual carriageways. R1 says 79.59% of the Claimant’s job was in-sourced because it included in that figure his work on the A55 dual carriageway. I find that R2’s witnesses’ analysis of the time recorded data is accurate as it is specific to the type of function being carried out and the duties involved within those respective functions; it is a more detailed analysis than R1’s and it is analysis of data compiled with the purpose of ascertaining what work was being done. In a sense the objective of collating that data by way of strict time recording was to establish the very point being made by R2, albeit justification of in-sourcing was not the original intention. I find that R1’s analysis of the claimant’s work was more broad-brush and was an attempt to show that as the claimant was always involved in all trunk road activity, whichever hat he was wearing, any changes by R2 to the method of working had to involve him and alter his employment status. R1’s analysis implied that it had a tenuous hold on the claimant and little direct control but rather that he more-or-less worked for R2 anyway even before April 2016; that was not the case. Prior to April 2016 the claimant was very involved in the delivery of work required to be done by R1 on its various roads including extensive dealings “hands on” with R1’s operatives and own contractors.

2.11 What did the Claimant do pre-April 2016? The claimant was a member of R1’s major maintenance consultation team/major projects group; it dealt with the trunk road activities. It included other managers and experts employed by R1 who, like the claimant, had other roles and responsibilities.

- 2.11.1 The Claimant dealt with payment of money due from the Agency to R1.
- 2.11.2 He worked for R1 on single carriageway trunk roads to cover all the roles of R1 as route custodian and the authority that carried out the work on site. This involved projects and delivery work to remedy defects via projected inspections and reactive responses including from the Agency via a portal. He was to ensure safe working, preparation and delivery of risk assessments, and compliance with financial standing orders; he was to book road space, procure and manage internal and external sub-contractors to carry out scheduled work. This was a hands-on role, the claimant carrying out self-generating instructions, as R1 was both custodian and “operator”.
- 2.11.3 The Claimant worked for R1 in respect of dual carriageways carrying out his roles as agent for the Agency who was the route custodian. The Claimant would receive instructions from the Agency. Having received those instructions the claimant performed his role for R1, which was (as PA) responsible to procure sub-contractors or engage its own operatives to carry out R2’s instructions, before reporting back to the Agency/R2. He usually did this work on night duty. This work included risk assessment, ensuring safe systems and on-site oversight and audit of the work. He would submit accounts and attend operations meetings each week with the Agency and other PA’s. In addition he was responsible to procure and manage required resources for the A55 scheduled works. Upon receipt of instructions from R2 the claimant performed a hands-on role.
- 2.11.4 To all intents and purposes the Claimant was responsible on both single and dual carriageway trunk roads to deal with repairs by use of sub-contractors, to ensure safe working, oversight of work and to report on it for payment. R1 was not custodian of the A55; as custodian the Agency instructed the Claimant and set its expectations. His duties, having received instructions, were largely the same or very similar in respect of single carriageway work where R1 was the custodian. Initiation of work and reporting back and the payment stream however was different. The work was broadly the same in that it entailed ensuring safe repair of the highway for safe use by motorists. The Claimant in his evidence did not accept the Respondent’s calculation of time showing in their view that 79.59% of his time whilst working for R1 was working directly for the Agency. He did not feel that that sounded correct. I find the claimant’s

evidence was clear, cogent and credible and I accept it in so far as it showed a difference between his roles whether R1 was or was not the custodian and when he said that his job now with R2 is very different to what it was with R1.

2.11.5 Consultancy: Consultancy work was not in-sourced by the Agency/R2. This work was in respect of vehicle retention and road design. It is still required by R2. R2 commissions it from PAs.

2.11.6 Duty forecasting: Whilst employed by R1 the Claimant worked on a rota doing duty forecasting working one week in 6. This was not in-sourced. He no longer does this work in his employment by R2; PAs do it.

2.11.7 Post April 2016: The Agency assumed custodianship of single carriageways on 1st April 2016, in addition to its existing custodianship of the A55. This meant that the Agency would be responsible for the initiation of work on both single carriageways and dual carriageways. The Agency did not take on a contractor role in respect of either single or dual carriageways. Viewed in the round therefore the Agency's work remained concerned with the safe and efficient management of the trunk road system however it divided up areas of responsibilities. Management of the requirements, being the custodian role, was retained and in-sourced to R2, whereas delivery of the service was separated out and remained with the PA's. Post April 2016 the Claimant performed duties only in the role of custodian but did so now for both single and dual carriageways. The Claimant would raise orders via the Agency's computerised system and to provide an estimate in respect of the work to be undertaken. The obligation then passed to the PA's to deliver the work and submit details of actual costs incurred. The Agency still engaged PA's in respect of the practical work via their direct employees or sub-contractors. The Agency still engaged PA's in respect of consultancy and winter forecasting. The Claimant did not oversee the practical works on site nor do consultancy work nor do the winter forecasting. In respect of consultancy work R1 and R2 competed for design and consultancy work as they had done before. As far as the Claimant was concerned his role was now more "hands off" than his pre April 2016 role which had been very much "hands on" in respect of practical works on site. The Agency still needed somebody to carry out the hands-on work on carriageways in each area. For its own reasons R1 decided not to continue to offer itself as a Partnership Authority and

ceased to provide certain services to the Agency on site that had previously been offered and delivered.

2.12 Prior to 1st April 2016 each PA maintained their own staff (and used lists of contractors) to act as effective custodians, repairers and maintainers of the single carriageway trunk roads along with their county roads; after that date R2 fully effected the custodian role for single carriageways; from then on R2 acted distantly (“hands off) to commission and instruct R1 to carry out the work on site (“hands on”). There had been no one in R2 acting as custodian of single carriageways prior to 1st April 2016 and PAs were free to organise their workforce as they saw fit to fulfil such duties as regards those trunk roads and their county roads. R1 did not create a bespoke or organised team specifically doing trunk road single carriageways’ work either exclusively within Denbighshire or in co-operation with other PAs. R1’s management (including of its personnel) of single carriageway trunk roads had been indistinguishable from its management of county roads. Management of dual carriageway trunk roads was different from that of the single carriageways, with split functions between R2 and the PAs; this model was then adopted on 1st April 2016 for all trunk roads.

2.13 Prior to April 2016 R1 said that the TUPE Regulations applied to the claimant and R2 said to the contrary. R2 recruited for the Agency by means of “prior consideration”, that is it gave certain employees of PA’s a head start in any recruitment process because of their earlier involvement, skills, expertise and experience. Prior to April 2016 R1 had nominated the Claimant for “prior consideration” for employment by R2/the Agency. R2 required the claimant to undergo a technical interview and make a presentation before securing his employment with R2/the Agency. There were over 40 nominations or applicants from the various PA’s for six posts. The claimant was successful. R2 appointed him because he was successful in the “prior consideration” recruitment process. It did not assume responsibility for the claimant as if he transferred directly.

2.14 The claimant’s role changed to one of commissioning work from PAs. His role was now “hands off”; he no longer works on-site managing delivery of R2’s commissions as before, and he does not do on-call and forecasting work. He is able to, but is not required to, do any of the previous consultancy work.

2.15 R1 relinquished PA status in respect of the A55 after April 2016. Responsibility for the delivery of Work Unit functions on the A55 dual carriageway after April was apportioned between R2, Flintshire County Council and Conwy Borough Council on a geographical and

availability basis. R1 retains responsibility to carry out work on its county roads, acting effectively as custodian, repairer and maintainer as before and using the same business model with its direct employees (apart from the claimant) and approved contractors.

2.16 As at 1st April 2016 and prior to R1 relinquishing its role as a PA, R1 was no longer the route custodian for single carriageway trunk roads but it retained the following functions all of which had involved the claimant and others employed by R1 to a greater or lesser extent until that time and who were organised for that purpose, to provide highways services within Denbighshire:

- 2.16.1 Works Unit functions;
- 2.16.2 Routine and reactive maintenance (including winter maintenance);
- 2.16.3 Winter forecasting;
- 2.16.4 Consultancy;
- 2.16.5 Major maintenance renewals;
- 2.16.6 Development control advice;
- 2.16.7 Initial response to customer enquiries and complaints;
- 2.16.8 Procurement arrangements in respect of works undertaken and overseeing them;
- 2.16.9 Payment recovery, including from the Agency, and payment of direct labour and sub-contractors.

3. The Law

- 3.1 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (“TUPE”) provide for the situation under consideration. Where there has been a relevant transfer, contracts of employment automatically transfer from the transferor of the undertaking to the transferee, providing protection of employment rights.
- 3.2 TUPE Reg 3 defines relevant transfers. The definition includes where there has been a service provision change, in our circumstances “in-sourcing” (Reg 3 (1) (b) (iii)). This relates to a situation where activities cease to be carried out by a contractor (for our purposes R1) for a client (for our purposes the Agency/R2) and are carried out instead by the client (R2 as and for the Agency). For such a situation to be covered by Reg 3 (1) (b) (iii) further conditions set out in Reg 3 (3) must be satisfied.
- 3.3 The additional conditions are that immediately before the service provision change there must be an organised grouping of employees having as its principal purpose the carrying out of the activities

concerned, the client must intend that the activities are to be carried out other than in connection with a single specific event or short term task, and the activities must not be in connection with the supply of goods for the client's use. In the current situation the only issue as to satisfaction of these conditions is the "organised grouping" condition.

- 3.4 "Principal", as in purpose, is given its usual and generally understood meaning. An employee may have many and varied duties and responsibilities making up their purpose at work; perhaps they have equal significance or one such stands out. If there is a purpose to someone's work that is the main focus either in terms of effort, time or sought-after achievement then that is their principal purpose. This can be valued in terms of hours spent but time alone is not the determining factor. There are many factors. The question to consider however is one of relative importance and to identify what the principal purpose was of all of the effort and time expended.
- 3.5 Similarly, an "organised grouping" speaks for itself. It does not have to involve a particular number of people nor involve complex arrangements. There must however be an element of co-ordination of effort according to some scheme, however vague or even inefficient, to achieve its purpose, as opposed to being random and with merely an unplanned or unintended outcome. A number of people might be working constructively and efficiently too and thereby fulfilling a purpose even though they are not organised in such a way that that is their joint and co-ordinated principal focus. To satisfy the requirement of the regulation there has to be at least some element of premeditated, to a degree regulated, arrangement of a person or people with a view to a particular sought-after achievement and that achievement must be the main objective for making that arrangement.

4. Application of Law to Facts

- 4.1 The "principal purpose" in question in this case was the custodianship of single carriageway trunk roads. The Agency retained custodianship of the A55 dual carriageway after April 2016. The Agency maintained its relationship with PA's to deliver client work dealing with PA's Works Units in respect of dual carriageways. The Agency took in-house custodianship of single carriageways and it now deals with PA's to deliver client work via the Works Units for these trunk roads. This is an example of in-sourcing.
- 4.2 Organised grouping: Prior to the 1st April 2016 custodianship of single carriageways was diffuse, that is it was carried on by all PAs and within PAs by many people who were organised for the principal

purpose of fulfilling all roles of a highway authority both as to trunk and county roads. PAs' employees fulfilled many and varied roles with different and complementing roles in respect of single and dual carriageways, county roads, and they performed other ancillary or related highway functions. There was no organised grouping of employees having the sole or principal purpose of carrying out activities of custodianship in respect of single carriageways. The Claimant's purpose was largely in delivery ("hands-on") on the A55 dual carriageway which role is still to be fulfilled in Denbighshire, albeit R1 relinquished the role voluntarily. Upon relinquishing that role it passed to R2 (in its own right and not as the Agency), Flintshire and Conwy Borough Council.

- 4.3 Apart from the claimant those engaged by R1 to carry out roles involving single carriageway trunk roads still had within their workload after 1st April 2016 all purposes and features of their jobs bar the commissioning of work on single carriageway trunk roads. Their main purpose and the one for which they were organised principally continues in all other respects, the provision and safe maintenance of highways in Denbighshire. Prior to 1st April 2016 there was no organised grouping within R1 whose principal purpose was custodianship as defined above.
- 4.4 In the absence of an organised grouping whose principal purpose was custodianship of single carriageway trunk roads prior to 1st April 2016, there was no TUPE transfer from R1 to R2 when R2 in-sourced that work for the Agency, or when the claimant commenced employment with R2.

Employment Judge T. Vincent Ryan

Dated: 13 November 2017

JUDGMENT SENT TO THE PARTIES ON

22 November 2017

FOR THE SECRETARY OF EMPLOYMENT TRIBUNALS