JUDGMENT AT PRELIMINARY HEARING

Case No. 2401483/2016

EMPLOYMENT TRIBUNALS

Claimant: Mr L Darku

Respondents: 1. Chemical and Technical Services and Personnel Limited
2. Associated Cleaning Contractors Limited
3. Champion Cleaning Services Limited
4. CTS Personnel Ltd

HELD AT: Liverpool **ON:** 20 December 2017

BEFORE: Employment Judge Franey
(sitting alone)

REPRESENTATION:
Claimant: Ms V Brown, Counsel
1st Respondent: Did not attend
2nd Respondent: Mr B Tomprefa, Director
3rd Respondent: Mr P Rynberk, Director
4th Respondent: Did not attend

JUDGMENT

When dismissed on 8 February 2016 the claimant was an employee of the second respondent, Associated Cleaning Contractors Limited. That company is liable should his complaints be well founded and all other respondents are dismissed from the proceedings.

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Employment Judge Franey

9 January 2018

JUDGMENT AND REASONS SENT TO THE PARTIES ON

15 January 2018

FOR THE TRIBUNAL OFFICE

REASONS

Introduction

1. The purpose of this preliminary hearing was to determine which of the respondents employed the claimant at the date he was dismissed, 8 February 2016.

2. The claim form was presented on 20 May 2016 and brought complaints against the four respondents identified in the heading to this judgment. It is convenient to refer to them as "R1", "Associated", "Champion" and "R4".

3. At a preliminary hearing before Employment Judge Robinson on 3 March 2017 a fifth respondent was added, Chemical and Technical Services Limited ("R5"). However, the claimant withdrew his complaints against R5 in November 2017 and it played no part in this preliminary hearing.

4. Nor did R1 or R4. By the end of June 2016 both of those companies had been dissolved.

5. At this preliminary hearing the claimant was represented by counsel. Associated was represented by its director, Mr Tomprefa, and Champion by its director, Mr Rynberk. Those three representatives had appeared at an earlier preliminary hearing on 6 September 2017 where directions were given for disclosure and this preliminary hearing was listed.

6. It was common ground that the claimant had been employed by R1 during 2015. In dispute was what, if anything, had happened to his employment between late 2015 and 8 February 2016. That related to a series of potential transfers by way of a service provision change under regulation 3 of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). Essentially my task was to determine whether the employment of the claimant had transferred from R1 at any stage, and if so to which company, and whether there had been any further transfers prior to 8 February 2016.

Documentary Evidence

7. The parties had agreed a bundle of documents which ran to almost 500 pages. Any reference to page numbers in these reasons is a reference to that bundle unless otherwise indicated.

8. At the start of the hearing Ms Brown applied on behalf of the claimant to introduce two further documents. They were a bank statement showing payments apparently made by Associated on 28 January 2016, and work permits issued by a company known as NuStar Terminals ("NuStar") for the claimant and some colleagues in the first two months of 2015. Both of the respondents objected to the introduction of this material so late, and indicated that they would need time to consider the documents. It did not seem to me that Mr Tomprefa in particular would have time to check the bank records of Associated from January 2016 without the

hearing being adjourned. As these proceedings had already been under way for approximately 18 months prior to this hearing, and given that this hearing had been adjourned from 6 September 2017 because of missing documents, I concluded it would be contrary to the overriding objective to allow further material to be admitted into evidence so late with the risk of further delay. I therefore refused the application for these documents to be admitted. I ignored the suggestion that a payment had been made by Associated to the claimant on 28 January 2016, and it turned out that there was no factual dispute about the work the claimant was doing in early 2015 in any event.

Witness Evidence

9. I heard evidence on oath or affirmation from three witnesses. They were the claimant, Mr Tomprefa and Mr Rynberk. Each of them had produced a written witness statement and each answered questions from the other parties and from the Tribunal.

10. At the previous preliminary hearing on 6 September 2017 it had been confirmed by Mr Tomprefa and Mr Rynberk that letters they had respectively written in April 2017 were to be treated as witness statements, and at the start of their oral evidence to this hearing they each confirmed that the details in those letters (pages 159 and 165A respectively) were true.

Relevant Legal Principles

11. All parties were agreed that the claimant had been an employee. It was simply a question of identifying which company employed him at the material time. That required consideration of TUPE. The material parts of TUPE were as follows.

12. A relevant transfer by way of a "service provision change" is defined in regulation 3:

> **(1) These Regulations apply to –**
>
> **(a) ……..**
>
> **(b) a service provision change, that is a situation in which –**
>
> **(i) activities cease to be carried out by a person ("a client") on his own behalf and are carried out instead by another person on the client's behalf ("a contractor");**
>
> **(ii) activities cease to be carried out by a contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by another person ("a subsequent contractor") on the client's behalf; or**
>
> **(iii) activities cease to be carried out by a contractor or a subsequent contractor on a client's behalf (whether or not those activities had previously been carried out by the client on his own behalf) and are carried out instead by the client on his own behalf,**
>
> **and in which the conditions set out in paragraph (3) are satisfied.**

> **(2) …….**
>
> **(2A) References in paragraph (1)(b) to activities being carried out instead by another person (including the client) are to activities which are fundamentally the same as the activities carried out by the person who has ceased to carry them out.**
>
> **(3) The conditions referred to in paragraph (1)(b) are that –**
>
> **(a) immediately before the service provision change –**
>
> **(i) there is an organised grouping of employees situated in Great Britain which has as its principal purpose the carrying out of the activities concerned on behalf of the client;**
>
> **(ii) the client intends that the activities will, following the service provision change, be carried out by the transferee other than in connection with a single specific event or task of short-term duration; and**
>
> **(b) the activities concerned do not consist wholly or mainly of the supply of goods for the client's use.**

13. If there has been a relevant transfer, regulation 4 says that the

> **"…transfer shall not operate so as to terminate the contract of employment of any person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to the relevant transfer, which would otherwise be terminated by the transfer, but any such contract shall have effect after the transfer as if originally made between the person so employed and the transferee."**

14. Regulation 3(1)(b) is a purely domestic provision derived not from any European provision but from section 38 of the Employment Relations Act 1999. In **Metropolitan Resources Limited v Churchill Dulwich Limited [2009] IRLR 700**, the EAT (HHJ Burke) described this as a "wholly new statutory concept" requiring a "straightforward and common sense application of the relevant statutory words to the individual circumstances" (paragraphs 27 and 28).

15. The first question in many cases is the identity of the client. That can present a particular difficulty in cases where a contractor providing services subcontracts to another company the provision of labour to enable those services to be provided. The Employment Appeal Tribunal considered such a situation arising out of the operation of a car park in **Jinks v London Borough of Havering UKEAT/0157/14/MC**. The claimant had been employed by a subcontractor which provided his labour services to another company which had a contract with the local authority to manage the car park. When the management of the car park was taken in house by the local authority the claimant contended that his employment transferred to it under TUPE. The case was struck out by the Employment Tribunal on the basis that the local authority had never been the client of the subcontractor. The Employment Appeal Tribunal allowed the appeal on the basis that it was possible that there could be more than one client in any given case and that the wording of regulation 3(1)(b)(iii) could be interpreted as making the local authority the client, particular because regulation 2(1) provided that references to "contractor" shall include a subcontractor. Ultimately the identity of the client is a question of fact for the Tribunal.

16. I was also referred by Ms Brown to a decision of the Court of Justice of the European Union in a cleaning case, **Temco Service Industries SA v Samir Inzilyen & others**, case number C-51/00 (24 January 2002). That case

demonstrated that a subcontracting situation does not necessarily fall outside the terms of Directive 77/187/EEC. However, as I concluded that there was a service provision change in this case it was not necessary for me to consider that point any further.

17. The way in which the remaining issues should be approached was considered by the EAT in **OCS Group UK Limited v Jones & Another [2009] UKEAT/0038/09**. The conditions in regulation 3(3)(a) can only be considered once it has been determined whether or not there is indeed there is a service provision change. The approach can be summarised as follows:

(1) The Tribunal must consider what the activities were under regulation 3(1)(b)(ii).

(2) The Tribunal must then consider whether those activities have ceased to be carried out by a contractor on a client's behalf and are carried out instead by another person on the client's behalf.

(3) The Tribunal must then consider whether the conditions in regulation 3(3) are satisfied.

(4) If the other requirements are met, the final question is whether the individual employee was assigned to that organised grouping (regulation 4(1).

Findings of Fact

18. This section of the reasons sets out the broad (and largely uncontroversial) chronology of events necessary to explain my decision and to put it into context.

19. Putting together that chronology was more difficult than it should have been. There were relevant documents which neither of the respondents had disclosed. These included, for example, invoices from Champion to its new clients showing the date from which it provided the services previously provided by R5, and invoices from Associated showing the date from which it started to supply staff to Champion. As a result this summary of the facts was pieced together from a great deal of tangential documentation.

20. There were some key factual disputes which it was necessary for me to resolve as part of my conclusion, and these will be addressed in the discussion and conclusions section below.

<u>Background</u>

21. R5 was incorporated on a date before October 1992 (page 286). By the mid 2000s it was trading as Transform Support Services, according to a contract later issued to the claimant in 2014 (page 190). It provided industrial cleaning services to a wide range of clients, including NuStar.

22. The claimant was employed as a cleaner from 24 April 2006. One of the owners of R5 was Stephen Rynberk, the father of Mr Rynberk of Champion. He sent

memoranda about holidays and absence to employees (pages 186-187). The claimant was issued with a written contract of employment around 2010 (pages 187A-187L). His place of work was various client sites across the North West as required by the company. In August 2011 he was subjected to disciplinary proceedings carried out by Mike Triggs on behalf of the company (pages 188-189).

23. R1 was incorporated on 12 October 2012 (page 288).

24. At pages 464-470 there appeared a list of R5 employees in July 2013. The claimant's name was on that list.

25. On 18 December 2013 Champion was incorporated (page 293). It was not at that stage linked to any of the other respondents.

26. On 7 May 2014 R4 was incorporated (page 296). Its name was initially Ash Staffing Services Limited but it changed on 19 June 2014 to CTS Personnel Limited.

27. Mr Tomprefa became a director of R5 in August 2013 (page 286). The Tomprefa and Rynberk families had a longstanding business relationship. Mr Rynberk had been working for R5 (run by his father) and had worked alongside the claimant, including working with him at NuStar. He was working his way up the management hierarchy and would eventually set up his own company (see paragraph 36 below).

2014 – 2015: Transfer from R5 to R1

28. In the first half of 2014 it was suggested to the claimant that he had become an employee of R1. A contract of employment issued by R1 was provided to him (pages 190-196) which recorded that his employment with R1 had begun on 6 January 2014. At the same time there was a move to reduce his hours of work and his rate of pay because of trading difficulties. With the help of his union the claimant resisted this. He did not believe that he had been consulted about any change. He did not sign the contract at that stage. He pursued a grievance about these matters which Mr Rynberk (senior) dealt with. The grievance was rejected and the claimant appealed.

29. Mr Tomprefa was in a management position with R5 by this stage. He dealt with the claimant's appeal against the grievance decision. The appeal outcome letter of 30 June 2014 appeared at pages 209-219. The grievance related to the proposed changes to the claimant's contract, and it attached a further version of the new contract at pages 220-230. The claimant did not sign that contract but carried on working and came to accept its terms.

30. By 7 May 2014 (page 207) R1 was invoicing R5 for supplying employees to R5. It was clear that R1 now employed the cleaners (including the claimant) and that it was supplying their services to R5 to enable R5 to fulfil its cleaning contracts with its commercial clients. By the summer of 2014, therefore, it was clear that the claimant had transferred to R1.

31. On 30 June 2014 Associated was incorporated (page 291). Its directors were Mr Tomprefa and Mr Rynberk (senior).

32. During this period the claimant was engaged almost exclusively on work at NuStar. The new contract provided a different rate for NuStar work compared to work at other client sites. Mr Rynberk was familiar with the NuStar site having worked there himself alongside the claimant, and he confirmed in his evidence that up to early 2014 the claimant was at NuStar as much as 95% of his time. It was still the main place of work for him at the start of 2015, but then it gradually declined and by the end of 2015 was fairly quiet. Work at NuStar was virtually non existent by January 2016.

33. Mr Rynberk explained that the work was done on a series of ad hoc arrangements for which R5 would have to quote each time in competition with other providers. The only guaranteed day-by-day work at NuStar was light office cleaning which was not work which the claimant was generally required to do.

April 2015: Transfer to Chemtech Staffing Limited?

34. A suggestion was later made by Mr Triggs and others in Employment Tribunal proceedings brought under case number 2401058/2016 that R1 employees had transferred to another company called Chemtech Staffing Limited in or around April 2015. Mr Tomprefa explained that it had been suggested to him much later that this had happened. However, there was no evidence before me showing that such a transfer had taken place in relation to the claimant. I noted that long after April 2015 R1 continued to pay the claimant (e.g. payslip 7 January 2016 at page 239) and the P45 for the claimant was issued by R1 in February 2016 (page 452). I found as a fact that the claimant's employment did not at any stage transfer to Chemtech Staffing Limited.

Late 2015: R5 sale to Champion

35. R5 experienced trading difficulties in the second part of 2015.

36. Mr Rynberk was looking to set up his own business and he acquired Champion. He became a director of Champion on 11 September 2015 (page 294). Mr Tomprefa's wife, Leah Tomprefa, was appointed a director on the same day. They took over from two outgoing directors (page 295).

37. Mr Rynberk senior was considering selling part of the business of R5. It looked like an opportunity for Mr Rynberk to go into business on his own account rather than working for his father's company. On 1 October 2015 R5 instructed Winterhill Asset Limited ("Winterhill") to value the assets and contracts for the purpose of disposal in the context of a possible insolvency. Winterhill provided those valuations by letters of 10 November 2015 at pages 418-412 and 413-416. Importantly, the former letter referred not only to R5 but to Associated, the company which Mr Tomprefa had set up in June 2014. The Winterhill letter correctly identified the registered office and date of incorporation of that company. It noted, however, that the contracts with clients were in the name of R5 and that the trading style of "CTS" would need to be retained.

38. Through Champion Mr Rynberk investigated the possibility of acquiring the assets and contracts of R5. On 15 December 2015 he wrote to Mr Tomprefa at R5 asking for details of all employees for the purposes of TUPE (page 232). Mr

Tomprefa responded on 22 December 2015 (page 233) saying that R5 did not have any employees: they were provided by R1. He also mentioned that those employees may have transferred under TUPE to Chemtech Staffing Limited.

39. In the letter of 26 April 2017 (page 165A) which was treated as part of Mr Rynberk's witness statement he said that the transaction between Champion and R5 was "purchased and paid for before the end of December 2015." His letter referred to the asset purchase only, not the purchase of contracts, but made clear that the client base was one of the assets purchased. In oral evidence, however, a dispute arose as to whether this transaction had completed in December 2015 or February 2016, and I will return to that in my conclusions.

January 2016

40. On 5 January 2016 Champion wrote to R1 and to Chemtech seeking details of employees provided to R5 for TUPE purposes (pages 237 and 238). No reply was received.

41. On 7 January 2016 the claimant was paid by R1 as usual (page 239). He received another payslip from R1 on 26 January 2016 (page 48). He was paid a week in arrears so this was pay for work he had already done.

February 2016

42. On 4 February 2016 Associated issued a payslip to the claimant. It appeared at page 47. He was paid for the same number of hours as he had been paid for by R1 on the previous payslip. Mr Tomprefa maintained that this payslip had been issued in error. He said that the payroll details of the claimant and others were being transferred to Associated in anticipation of Associated taking over the contract to supply their labour to Champion, and that it was an administrative error that caused payment actually to have been made. I will return to that issue in my conclusions.

8 February 2016: Dismissal

43. On 8 February 2016 Mr Triggs rang the claimant and told him that he was being made redundant. The claimant was dismissed with immediate effect.

44. The claimant sent an email on 12 February 2016 to Mr Triggs at page 249 which recorded what he had been told. He said:

> **"You called me to say because of work wars there is no work and that the company is folding so you have made me redundant as of that date. You also said all my details regarding my redundancy will be in the post ASAP and with me this week."**

45. The claimant did no further work after 8 February 2016. He chased Mr Triggs for the promised details in the days that followed. He sent an email on 15 February 2016 at page 250 to say that nothing had arrived. Mr Triggs forwarded that email to Mr Tomprefa (page 251).

46. On 16 February 2016 R1 issued the claimant's P45. It showed his date of leaving the employment of R1 as 22 January 2016 (page 452).

47. Paragraphs 15 and 16 of Mr Tomprefa's witness statement explained that on 17 February 2016 he learned from Mr Rynberk that there had been no reply from R1 or Chemtech Staffing Limited to his letters of 5 January about TUPE details. Mr Tomprefa's evidence was that he and Mr Rynberk then discussed the possibility of Associated providing labour to Champion in the same way as R1 had been doing for R5. This agreement was said to have been finalised verbally at a meeting the following day. It was said that there was no written agreement because it was a "gentleman's agreement". However, the same day Mr Tomprefa wrote on behalf of Associated to R1 saying that Associated would be providing labour services for the contracts which Champion was taking over from R5. That letter appeared at pages 254-255. A letter in similar terms was sent to Chemtech Staffing Limited (pages 256-257).

48. On 24 February the claimant emailed Mr Triggs (page 259). He was still trying to find out details about his dismissal. He wanted to know why he had been dismissed and the reasons he had not been paid notice pay or redundancy pay. He said he wanted to appeal against his dismissal. Mr Triggs responded by forwarding that email to Mr Rynberk at Champion.

49. At pages 405-416 in the bundle appeared an asset purchase agreement by which R5 sold to Champion its assets and contracts. The agreement was signed by all parties on 26 February 2016. Mr Rynberk senior and Mr Tomprefa signed on behalf of R5, and Mr Rynberk and Leah Tomprefa signed on behalf of Champion. The letters from Winterhill were attached.

50. The same day Mr Tomprefa emailed the claimant to say that R5 was in administration and gave details of the liquidators (page 260).

51. There was further correspondence during 2016 which was not directly material to the matter I had to decide. In November 2016 a list of customers of R5 was issued which appeared to have been drawn from historic data (pages 116-123).

Submissions

52. At the conclusion of the evidence each party made a submission.

Claimant's Submission

53. Helpfully Ms Brown had produced written submissions on behalf of the claimant which ran to eight pages and twenty paragraphs, accompanied by copies of the **Jinks** and **Temco** decisions. Reference should be made to those written submissions as appropriate. It was common ground that the claimant had been employed by R1, but she submitted that the absence of any documentation provided by the respondents should support the conclusion that the transfer of activities from R5 to Champion had occurred by the end of December 2015. At that stage, she submitted, the claimant would have transferred to Champion under TUPE by way of service provision change, since the client remained the end user for whom the cleaning activities were carried out. She submitted that the claimant had been assigned to an organised grouping which had as its principal purpose the cleaning done at the NuStar site.

54. If I was against her on that she submitted that the claimant had transferred to Associated by the end of January 2016. She relied on the date on the P45, and the fact that the claimant was paid by Associated in early February and not paid by R1 after 26 January. There had been no request for repayment of those sums pursued by Associated and it could not be explained as an error.

55. More broadly, she submitted that I should treat the evidence of the respondents with caution because it appeared there had been a plan to set matters up so that Associated would take over the provision of labour from R1 early in the New Year but in a way which would exclude the claimant and possibly others. She reminded me that Associated had been involved as early as November 2015 according to the Winterhill letters.

Associated's Submission

56. For Associated Mr Tomprefa submitted that there had been no transfer of the claimant's employment until the signature of the asset purchase agreement on 26 February 2016, and that as the claimant had already been dismissed by R1 by then he could not have transferred. Mr Tomprefa submitted that Mr Rynberk must be mistaken about the transaction completing in December 2015 because the written asset purchase agreement was executed in February.

57. He said that the reference to Associated in the Winterhill letter of 10 November 2015 must have been a mistake, possibly because "Associated" had been a trading name of R1 before Associated was separately incorporated, and he said that the claimant had been paid in error by Associated in early February because his details had been entered onto the payroll system in anticipation of a subsequent transfer. He suggested it would be ridiculous to have a plan involving the liquidation and establishment of new companies simply to get rid of one person. He said that the emails from Mr Triggs had been forwarded to him because he had been involved in R5, not because of his role with Associated.

Champion's Submission

58. On behalf of Champion Mr Rynberk submitted that it had simply not employed any staff. It had used staff who were employed by Associated in exactly the same way as R5 had used staff employed by R1.

59. Having heard the submissions I adjourned briefly for deliberations and then gave oral judgment. What follows in the next section is an expanded version of what I communicated to the parties orally.

Discussion and Conclusions

60. Having considered the facts, the law and the submissions, I reached the following conclusions.

Employment by R1

61. It was common ground that the claimant was employed by R1 by the end of 2014. For reasons set out above I rejected the suggestion that his employment had

transferred to Chemtech Staffing Limited: on the evidence before me that was no more than a rumour. He was still paid by R1 into 2016.

R5 Sale to Champion and Associated's Involvement

62. It was clear to me that Mr Rynberk had purchased Champion to enable him to set up in business on his own, his source of work to be the assets and contracts he was to purchase from R5, his father's company. The key factual issue for me to determine was when that transaction happened. Mr Rynberk was clear in his letter from April 2017 that the transaction was completed by the end of December 2015, yet Mr Tomprefa maintained that it did not happen until February 2016.

63. The documentary evidence supported the February 2016 date. Mr Rynberk was writing on behalf of Champion to R1 and Chemtech on 5 January 2016 asking for details of employees for TUPE purposes. The asset purchase agreement in the bundle appeared to have been signed on 26 February 2016. Those matters were consistent with Mr Tomprefa's argument that the transaction happened after the claimant had been dismissed.

64. That was also consistent on the face of it with Mr Tomprefa's assertion that the agreement between Associated and Champion for the former to supply labour to the latter only arose as a possibility on 17 February 2016, and was only finalised the following day. If correct, that too would mean that the claimant could not have transferred to Associated because his employment had already ended before that possibility was ever contemplated.

65. However, there were other indications in the evidence before me which pointed to these matters having been concluded before mid February. It did not simply rest on the word of Mr Rynberk alone. Those indications were as follows.

66. Firstly, the documents issued by R1 showed that it ceased to employ the claimant on 22 January 2016 (the P45) and the last payment made by R1 to the claimant was on 26 January 2016 (page 48). R1 did not pay the claimant thereafter. However, R2 paid the claimant on 4 February 2016. Had that been simply an administrative error by his company as Mr Tomprefa maintained, one would expect the claimant to have been paid by R1 as well. That did not happen.

67. Secondly, the explanation that this was an error was not one I accepted. Mr Tomprefa said that he was transferring payroll details of the claimant and others to Associated's accounting system in advance of a possible transfer, yet his witness statement (paragraphs 15-17) asserted that such a transfer only arose as a possibility on 17 February 2016 when he learned from Mr Rynberk that neither R1 nor Chemtech Staffing Limited had responded to the TUPE correspondence sent in early January. Those two accounts could not be reconciled. It left me with reservations as to the accuracy of the account in Mr Tomprefa's witness statement.

68. Thirdly, that account in his witness statement was irreconcilable with the fact that Associated was already involved by the latest on 10 November 2015 when reference was made to that company in the letter from Winterhill at page 410. Mr Tomprefa's suggestion that this was simply an error by Winterhill was not credible. I concluded that it had been apparent to Winterhill in October or early November 2015

that Associated would have some involvement in the new structure once R5 had sold its assets to Champion. That wholly undermined the impression Mr Tomprefa sought to give in his witness statement.

69. Putting these matters together I concluded that Mr Rynberk was right to say that the transaction had been completed by the end of December 2015, and that within a short space of that transaction being completed the supply of labour to Champion was undertaken by Associated not by R1. In my judgment that transition took effect after 22 January 2016, which accounted for the date on the P45, the fact that the claimant was paid by Associated in early February, and that when he contacted Mr Triggs with a query Mr Triggs referred that query to Mr Tomprefa (page 251). Since November 2015 (if not earlier) it been the intention that Associated would perform this role in place of R1 once Champion acquired the contracts of R5, hence the reference to Associated in the Winterhill letter.

Transfer to Champion?

70. I rejected the contention by Ms Brown that the claimant's employment had transferred to Champion in December 2015. He had ceased to be an employee of R5 in mid 2014. He continued to be employed by R1 into January 2016 notwithstanding the transaction between R5 and Champion in December 2015.

Transfer to Associated?

71. Adopting the structured approach advocated in **OCS Group**, however, it seemed to me that the claimant had transferred under regulation 3 of TUPE to Associated on the following basis.

72. Firstly, the "activities" were the cleaning work required by contracts held by R5 until December 2015, and then by Champion thereafter.

73. Secondly, from 23 January 2016 those activities ceased to be carried out by R1 (the "contractor") on behalf of Champion (the "client") and were instead carried out by Associated (the "subsequent contractor") on behalf of the client.

74. Thirdly, the conditions set out in regulation 3(3) were satisfied. There was an organised grouping of employees of R1 allocated to work on contracts held by R5, and subsequently by Champion. There was no suggestion that employees of R1 worked for any other contractors. That organised grouping had as its principal purpose carrying out work for Champion once Champion took over the cleaning contracts from R5. Champion was in that position by the end of December 2015. This was not a single specific event or task of short term duration and the activities concerned were not wholly or mainly the supply of goods.

75. Fourthly, the claimant formed part of that organised grouping of R1 employees.

76. For those reasons I concluded that there had been a service provision change in respect of the claimant's employment transferring him from R1 to Associated with effect from 23 January 2016 under regulation 3(1)(b)(ii) of TUPE.

77. Accordingly before 8 February 2016 the claimant had become an employee of Associated. That company is liable should his complaints prove to be well founded. The other respondents were dismissed from the proceedings

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Employment Judge Franey

9 January 2018