EMPLOYMENT TRIBUNALS

Claimants: Ms E Box and others (see schedule)
Respondents: [1] Ms Kellie Noble (Leodinis) trading as Ingrams Solicitors [and Paul Stott against whom proceedings are currently stayed]
[2] Lawyers Incorporated Limited
[3] The Secretary of State for Business, Energy and Efficiency

Heard at: Hull **On:** 10 and 11 October 2018, 12 October 2018 (in chambers)

Before: Employment Judge D N Jones

REPRESENTATION:

Claimants: Ms S Holborn, consultant for Miss H Wray and In person, (see list of those in attendance)
Respondent: [1] Mr R McKenzie, consultant
[2] Mr J Boyd, counsel
[3] Not in attendance

JUDGMENT AT PRELIMINARY HEARING

1. There was a transfer of part of an economic entity of the legal practice known as Ingrams, the first respondent, in the form of its conveyancing and dispute resolution departments, to the second respondent and the practice it owned and operated, known as Gold Law.

2. Only the claimants Ms Box, Miss Wray, Mr Hakim, Mrs Anderson and Mrs Ward were assigned to the organised group of resources in the part of the first respondent which transferred to the second respondent.

REASONS

Introduction

1. This was a preliminary hearing to determine the issues identified by Employment Judge Wade and Employment Judge Lancaster on 16 January 2018 and 15 June 2018 respectively. At this hearing the parties did not contend that there had been a service provision change, so the issues identified at paragraphs 7.4 to 7.8 of the Order fell away. Nor did the parties adduce evidence about any economic, technical or organisational (ETO) reason for the dismissal. It was not submitted that there could be continuity of employment regardless of TUPE under section 218 of the Employment Rights Act 1996. Mr MacKenzie suggested that there could have been an ETO raised by the second respondent if there had been a transfer, but as this was not advanced by Mr Boyd the proposition did not arise for determination.

Evidence

2. Ten of the claimants attended the hearing, Mrs E Box, Mrs S Smith, Mrs S O Cundill, Mrs A Mower, Mrs J Densley, Miss A MacFarlane, Mrs S Anderson, Mrs L Barratt, Mr F Hakim and Miss H Wray. Of those Mrs Box, Mrs Smith, Mrs Densely, Mrs Anderson, Mrs Barratt, and Miss Wray gave evidence.
3. Ms Noble gave evidence. The proceedings against Mr Stott are stayed, pending an appeal to the Employment Appeal Tribunal. Mr M B Caplan and Mr D C Tucker, directors and shareholders in the second respondent gave evidence on its behalf. A bundle of 345 pages was referred to and some further documents were produced during the hearing.
4. In the following findings, I have not addressed the evidence of some of the claimants. That should not be taken to be because I did not pay close attention to what was said, but rather that the narrow issues I am addressing at this preliminary hearing did not turn upon the facts of their particular cases.

Background/findings of fact

5. Ingrams was a firm of solicitors which came into existence on 9 April 2001. The partners were Mr Paul Stott and Ms Catherine Copp. Over the years there were changes to the partnership but Mr Stott remained until the firm was sold to Ms Noble on 8 December 2016. By that stage Mr Stott had been the sole equity partner in the firm and Ms Noble was a salaried partner. Mr Stott was struck off as a solicitor by his regulatory body on 28th of October 2016 and declared bankrupt on 25 April 2017. On 8 July 2017 Ingrams closed. The history is fully set out in the judgment and reasons of Employment Judge Lancaster, sent on 27 March 2018.
6. All the claimants had been employed by Ingrams. Four of the claimants, Miss Wray, Mr Hakim, Mrs Anderson and Mrs Ward were later engaged in employment by Lawyers Incorporated Employment Services Ltd [LIESL], a company which is owned by Lawyers Incorporated Limited, the second respondent. In addition, LIESL

employed Mrs Stott, who had been the practice manager of Ingrams and was the wife of Mr Stott, Mr Leonidis, the husband of Ms Noble and Ms Brown, all of whom were employed by Ingrams until it ceased to practise.

7. Towards the end of 2016, Mr David Quigley, the Director of Acquisitions[1] of the second respondent introduced one of its directors and shareholders, Mr Caplan, to Mr Stott with a view to Ingrams entering into an arrangement whereby the second respondent took over its practice. This was not to be as a successor practice, but intended to reflect a business model of the second respondent. That envisaged the second respondent taking over responsibility for administration, accounting and banking services and providing professional indemnity insurance for a solicitors' practice. The practice would be closed and run-off insurance paid by the former partners, who would become self-employed consultants to the second respondent through a company of which they were the sole directors and shareholders.

8. Discussions took place between Ms Noble, Mr Quigley and Mr Caplan in the first months of 2017 concerning the proposals. In addition Mrs Stott, the practice manager, had discussions with Mr Quigley and Mr Caplan and she made a number of representations to staff at Ingrams as to the likely outcome. Members of the conveyancing team were led to believe by Miss Noble and Mrs Stott that they were to transfer to the second respondent and, I am satisfied from the evidence of Mr Hakim, that they had been told that the provisions of TUPE would apply.

9. In March 2017, letters were sent to all employees of the first respondent, save for those in the conveyancing department, to inform them that due to the imminent closure of Ingrams and the transfer of files to another law firm, there would have to be redundancies. They were given notice they were at risk. The letter notified employees that attempts would be made to avoid redundancy and a consultation process would commence. When these letters were sent, Ms Noble expected the Professional Indemnity Insurance (PII) for Ingrams to expire at the end of March 2017. She was able to arrange for an extension to June and, subsequently, to 31 July 2017.

10. On 10 May 2017 Mr Max Gold, a solicitor who headed the criminal department, died. He was a prominent legal figure in the community. Although the criminal department continued to operate until the closure of the firm, it was not possible to secure a novation of the criminal legal aid contract with the authority of the Legal Aid Authority (LAA). As 40% of the fees received by Ingrams were derived from the criminal department, this had a significant impact on the discussions. It became apparent that any takeover of the business would no longer include criminal work. From 20 June 2017, the focus of the discussions was upon the conveyancing and dispute resolution teams and their respective work being taken over by the second respondent, with the likelihood that members of staff outside these departments would be made redundant.

11. On 24 May 2017 Mrs Stott and Mrs Densley attended the second respondent's offices in Manchester. They took an agenda of items to be discussed concerning the changeover. Mr Caplan, Mr Tucker and Mr Quigley were present. Concern was expressed about the drop in the fees at Ingrams. I accept the evidence of Mrs Densley that Mr Caplan expressed his wish to avoid taking over Ingrams as a

[1] Although described as a director, Mr Quigley was a self-employed consultant and not a company director.

successor practice, in respect of which he was to seek legal advice. He also said he wished to avoid taking on any members of staff under TUPE and he expressed the opinion that Miss Noble should go bankrupt.

12. In a subsequent telephone conversation that day, according to Ms Noble, Mr Tucker informed her that he wanted her to give notice of redundancy to all employees of Ingrams and that the second respondent would employ a number of them. As to her position, he suggested she petitioned for her own bankruptcy. The redundancy payments would be picked up by the State. The second respondent would take her on three months after Ingrams closed. Mr Tucker agreed there was a telephone call, which according to his records lasted 15.47 minutes. He disputes Ms Noble's account of the conversation. He says that he would not interfere with the running of another practice and tell her to make staff redundant or make herself bankrupt. He says the arrangement had been thrown into doubt by the death of Mr Gold at that time. He said he would never tell anyone that they should petition for bankruptcy, as it was not something he had professional experience in.

13. I am satisfied the discussion went along the lines recalled by Ms Noble. It is consistent with the earlier discussion which had taken place in the meeting in Manchester. Also, Mr Hakim recalled that he had been told by Mr Quigley that Ms Noble was to go bankrupt and would take three months off before joining the second respondent. The consistency of this evidence with that of what Mrs Densley said had been discussed at the meeting and what Ms Noble said Mr Tucker had suggested is striking. In contrast Mr Tucker had the disadvantage of not having any independent recollection of precisely what had been said during the telephone conversation.

14. On 22 June 2017 Mrs Stott sent to Mr Caplan the contracts for the seven members of staff who ultimately were employed by LIESL as well as for Mr Clive Alton. He was a member of the dispute resolution team but resigned shortly before the end of July. Mrs Stott included the salaries of these employees.

15. On 21 July 2017 Ms Noble wrote, on behalf of Ingrams, to the existing clients of the conveyancing and dispute resolution departments. She informed them that the conveyancing and dispute resolutions teams of Ingrams would be joining the second respondent and that they would be able to deal with them there. The clients were informed that the solicitors and legal executives who had acted in the past would join the second respondent and, as long as they provided authorisation, the same people would be able to act for them. The clients were asked to complete a consent form if they wished Ingrams to transfer to the second respondent their client account balance, their current live files and any property/trust deeds.

16. 50% of the fees generated by the dispute resolution team came from a contract for debt collection with Npower. On 27 July 2017 Npower declined a request to transfer their account to the second respondent.

17. On 21 July 2017 Mrs Stott wrote to Ms Howard, of the second respondent, and included a list of the eight members of staff whose details she had provided the previous month, stating that they were the staff who would be transferring to Gold Law. That was the name of the legal practice which was to be operated by the second respondent from new premises near to the city centre of Hull. In response Ms Howard informed Mrs Stott that those employees would be '**joining'** Gold Law. She disagreed with the suggestion they were transferring and stated that the word 'transfer' should not be referred to in any way. Ms Howard said that the staff would execute fresh contracts with Lawyers Inc. but she could not, at that stage, provide contracts of employment for Ms Box and Mrs Wray. She stated they would be

provided with contracts at a later time if they wished to take up a position with Gold Law. Ms Box and Miss Wray would have been on maternity leave at the expected date of the opening of Gold Law.

18. On 21 July 2017 Ms Noble held a meeting with all staff at Ingrams. A number were absent, such as Ms Box on maternity leave. They were informed that the firm would be closing on 28 July 2018 due to the expiry of PII. Letters were sent to all members of staff, save for Mrs Densley, on 21 July 2017 informing them that Ingrams would close on 28 July 2018 and their employment would then terminate, by reason of redundancy. They were informed that, in the circumstances, there was no value in consulting to avoid redundancy or to consider alternative employment. A redundancy notice was sent to Mrs Densley on 25 July 2017. This was because she had resigned on 24 April 2017 and her notice period was to expire on 24 May 2017. However, Mr Quigley had encouraged her to stay on with the possibility that a new role would be offered by the second respondent. Mrs Stott subsequently suspended the final day of work for Mrs Densley.

19. On 23 July 2017 Mr Caplan sent an email to Ms Noble and Mrs Stott in which he suggested the form of a message on the voicemail of Ingrams. It was "*thank you for calling Ingrams. This practice has now closed. Our conveyancing, dispute resolution, employment and family departments have now left Ingrams, and are joining Gold Law part of Lawyers Inc. They will be pleased to assist you and you can, contact them on…'.* A script on notepaper and emails was to include a similar reference to those departments having left Ingrams and having joined Gold Law of Lawyers Inc.

20. On 26 July 2017 Mr Caplan asked Ms Noble to seek a further extension of the PII to keep the firm open for a further month. Ms Noble refused. Mr Caplan suggested that this was because Ingrams had exhausted the permissible extensions of cover. Documentation was adduced late in the proceedings in which Ms Noble had represented to Mr Caplan that to have been the case, in an email on 11 July 2017. I accepted her explanation when she was recalled to address this matter. Although that is what she had stated to Mr Caplan, she was not being frank with him. Mr Quigley and Mrs Stott had taken the view that the second respondent had been procrastinating and suggested to Ms Noble that she needed to force their hand. She made that excuse as had been suggested by them.

21. Ms Noble agreed to facilitate the transfer of clients' files to ensure that at least some of the staff would be engaged by the second respondent, and they would be needed by the second respondent. She received no financial payment for this. She decided against petitioning for her own bankruptcy.

22. On 1 August 2017, the second respondent launched the practice, Gold Law, from newly leased premises in Beverley Road, Hull. Approaches had been made to Mr Hakim, Mrs Anderson, Mr Leonidis, Ms Brown and Mrs Ward by Mr Quigley or by Mrs Stott on his behalf. Mr Lonidis was also engaged, although it is unclear who spoke directly to him. They agreed to commence work for the second respondent. They duly entered into contracts of employment with LIESL and commenced work that week at Gold Law. When it opened its only staff were those who had previously been employed by Ingrams and its only clients were those of Ingrams.

23. Miss Wray did not receive such an approach. At that time she would have just commenced her maternity leave at Ingrams, had she not been made redundant. In September 2017, having seen a job advertised at the new firm for the post which was the same as the one she had previously held at Ingrams, she contacted Mrs

Stott who arranged for a meeting with Mr Caplan. She then underwent a two-stage interview and was taken on.

24. Gold Law did not have an easy introductory week, as there was no online facility and only one phone. Seven or eight boxes of conveyancing files were provided from Ingrams, which took considerable time to sort. Two or three boxes of dispute resolution files had arrived, which similarly required time to evaluate. One of the boxes related to Npower and this had to be redirected. Several did not have the authority of the clients to be handled by Gold Law and a number of these were sent to Gordons, the solicitors firm which had intervened in Ingrams on behalf of the Law Society in the first week of August 2017. It took several weeks to work through the boxes of files and two locums were employed in August to assist.

25. The evidence from the first respondent and the second respondent in respect of the number of files which were transferred from Ingrams was unclear. Ms Noble said that 50 files were transferred, of which 75% to 80% were conveyancing files. She had no documentation to assist in this respect, but relied upon her best recollection. Mr Caplan referred to some lists of files which had been sent to Gordons, concerning files which did not have the clients' authority, but these were not quantified.

26. I found the evidence of Mr Hakim and Miss Wray of the greatest value on this issue. Although neither could draw support from any records, Mr Hakim had worked on many of these cases at Ingrams and both had unloaded the files from the boxes at Gold Law. Although Miss Wray was not working for Gold Law when it opened, she had visited the premises to see her colleagues and had offered her assistance sorting out the files. Mr Hakim said there were 70 to 80 conveyancing files. 5% to 10% did not have authorities and were sent to Gordons. He had sent two clients from Ingrams elsewhere because the completion date was imminent and it would not have been possible to deliver the service in time at Gold Law. Miss Wray thought there were 85 to 90 files and that 90% had given consent. Mrs Anderson gave similar evidence.

27. I find that approximately 80 files of clients were taken over by Gold Law and some referrals arrived later. I accept these were the majority of the clients of the conveyancing department at the time Ingrams closed.

28. Although Miss Noble had suggested, in an email to the trustee in bankruptcy of Mr Stott, that she had significant contacts with families and agents who would take their work with her, this was not the case. She began work for Jayne Brooks Law and the principal agency she had been referring to in this email, Legal Direct, did not place the work with her new firm. Gold Law had to apply afresh to be on the panel to which referrals could be made by Legal Direct.

29. In respect of the dispute resolution files, the evidence was even more sketchy. Miss Wray helped unpack two boxes of files and redirected one box of Npower cases.

The Law

30. The Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to 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"[2]*.* An economic entity means "*an organised grouping of resources which has the objective of pursuing an economic activity, whether or not that activity is central or ancillary*"[3]. A relevant transfer may be affected by a series of two or more transactions and may take place whether or not any property is transferred [4].

31. By regulation 4 (1) "*a relevant 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".*

32. Any act or omission before the transfer is completed, of or in relation to the transferor in respect of that contract for a person assigned to that organised grouping of resources or employees, shall be deemed to have been an act or omission of or in relation to the transferee[5].

33. By regulation 4 (3) "*any reference in paragraph 1 to a person employed by the transferor and assigned to the organised grouping of resources or employees that is subject to a relevant transfer, is a reference to a person so employed immediately before the transfer, or would have been so employed if he had not been dismissed in the circumstances described in regulation 7(1), including, where the transfer is affected by a series of two or more transactions, a person so employed and assigned or who would have been so employed and assigned immediately before any of those transactions".*

34. Regulation 7 provides that where, either before or after a relevant transfer, any employee of the transferor or transferee is dismissed, that employee shall be treated as unfairly dismissed if the sole or principal reason for the dismissal is the transfer. That is dis-applied if the sole or principal reason for the dismissal is economic, technical or organisational reason entailing changes in the workforce of either transferor or transferee before or after a relevant transfer. These provisions apply irrespective of whether the employee in question is assigned to the organised grouping of resources or employees that is, or will be, transferred.

35. The Regulations implement the *Acquired Rights Directive, 2001/23/EC* and must be interpreted in accordance with it and decisions of the Court of Justice of the European Union.

36. In domestic law, the Employment Appeal Tribunal provided guidance in respect of what will constitute an economic entity and when it retains its identity for after the transfer, see **Cheeseman v R Brewer Contracts Ltd [2001] IRLR 144**. For there to be an economic entity there must be an organised grouping of persons and assets facilitating the exercise of an economic activity which pursues a specific objective[6]. The entity embraces more than simply the activity. It must be structured autonomous and stable. It may have tangible or intangible assets, but these need not be significant and an organised grouping of wage earners who are specifically

[2] Regulation 3(1)(a)
[3] Regulation 3 (2)
[4] Regulation 3 (6)
[5] Regulation 4 (2) (b)
[6] Suzen v Zehenacker Gebaudereinigung GmbH Krankenhausservice

permanently assigned to a common task may, in the absence of other factors of production, amount to an economic entity. The identity of the entity is to be derived from factors such as its workforce, management staff, the way in which it work is organised, its operating methods the customers and operational resources.

37. Considerations as to whether it has retained its identity after the transfer include the nature of business or undertaking, whether tangible assets such as building and stock have been retained, what intangible assets have been retained, whether the majority of staff or customers are retained, the degree of similarity of activities before and after the putative transfer and the duration of interruption of any activities.

38. The parties cited a number of authorities including **Cheeseman**: **Alno (UK) Ltd v Turner [2015] UKEAT/0349/15**, **Spijkers v Benedik Abattoir CV and another ECJ [1986] Case 24/85**, **Tabberner and others v Mears Ltd and others [2018] UKEAT 0064-17-0502** and **Hynd v David J Armstrong and others [2007] CSIH 16**.

Discussion and conclusions

Was there an economic entity immediately before the putative transfer?

39. There was, unquestionably, an economic entity prior to the transfer. Ingrams was a firm of solicitors which pursued an economic activity, providing legal services from offices in Hessle, principally to the community in Hull and surrounding areas. It was structured, in the sense that it included a number of departments which specialised in the provision of legal advice and representation, principally devoted to criminal work, conveyancing and dispute resolution. The last category embraced contentious work in a number of fields such as employment, family and debt collection. It was autonomous, being a firm which was owned by one equity partner, Ms Noble who was subject to the regulatory framework of the Law Society. It was stable, notwithstanding financial difficulties continued to operate until its closure with all of its principal departments functioning.

Did it retain its identity after the transfer?

40. As the authorities emphasise this is a multifactorial assessment. These were referred to by Employment Judge Wade in the list of issues.

41. Criminal work generated 40% of the income of Ingrams. The original intention of Mr Caplan and Mr Tucker of the second respondent was to take over the operation of Ingrams' work in its entirety, within its business model. That was no longer viable following the death of Mr Gold and the refusal of the LAA to agree to a novation of criminal legal aid contract. The focus then was upon the other two departments, conveyancing and dispute resolution.

42. After the putative transfer the second respondent's practice used the trading name Gold Law. This was agreed between Ms Noble and Mr Caplan as a tribute to Mr Max Gold. It did retain a connection to Ingrams, given Mr Gold's notoriety, which could have generated some goodwill, but that was limited, because Mr Gold was a criminal specialist and, for the reasons set out, that part of the practice was not continued by the second respondent.

43. New premises were opened by the second respondent. These were not in Hessle, a town near the Humber Bridge, but within the city centre of Hull some 5 or 6 miles away. The catchment area for legal services shifted, but not to any significant

degree. A legal service provider will rely on its geographical location to its advantage, although less so in the digital age. The service did not move outside Hull and it was plainly the hope of Mr Caplan and Mr Tucker that the practice would generate work from the locality. Otherwise, the second respondent could have operated purely out of Manchester.

44. None of the tangible assets were retained. A new telephone line and computer system were operated by the second respondent. The different software system created difficulties in seamless migrating the client data on to the Gold Law's programmes.

45. A significant part of the administrative and financial resource was centralised in Manchester at the second respondent's HQ. Consistently with its business model, financial and administrative services were to be taken away from the operation of those at the former practice, save for those secretarial functions essential to support the office and clients.

46. Gold Law had a different Law Society registration to Ingrams and new PII.

47. There was retention of 7 out of 22 staff. I recognise that in using the term retention, these staff had been made redundant by the first respondent and employed 3 days later by the second respondent. I address the significance of that below. Mrs Stott, Ms Brown and Mrs Ward were part of the dispute resolution team. Mrs Stott was also the practice manager. That left only Ms Box of that department, who had been on maternity leave and to whom Mr Caplan expressed no interest later, after the loss of Npower, notwithstanding Mrs Stott's suggestion that a discussion with Mr Caplan may be fruitful. Most of the conveyancing department were retained, Miss Wray, administrator, after having reapplied for her old job, Mr Hakim, a solicitor, and Mrs Anderson, administrator. Ms Noble, the other member of the department was not taken on, but went to work elsewhere.

48. There was retention of the majority of the conveyancing clients and about half the dispute resolution clients of Ingrams.

49. I am not satisfied that the delay, of three days from the closing of Ingrams to the opening of Gold Law is of any significance, it being so relatively short. It did not interrupt in any relevant way the continuation of that part of the practice which Gold Law operated.

50. Mr McKenzie, on behalf of the first respondent, conceded that the criminal department was not transferred pursuant to the Regulations. This was not formally conceded by the claimants. I regard the concession of Mr McKenzie as well judged. The identity of Gold Law was significantly different to that of Ingrams, with no criminal service having been offered to the public at all. It was 40% of the Ingrams' operation. That gave the economic entity a sufficiently different identity after the putative transfer to before. The activities were reduced. Together with some of the other dissimilarities I have set out above, not least the reduced numbers of staff required, there was not a sufficient coincidence of identity before and after to establish a transfer of Inghams as an economic entity, in its totality.

51. But the Regulations provide for the transfer of part of an economic entity. Mr McKenzie submits that there was part of such an entity which was identifiable and transferred with the exception of the criminal department.

52. The existing clients of the conveyancing and dispute resolution departments who transferred provided a source of work. Work in progress had been billed by Ingrams up to date of closure, but there remained fees to be billed on the work still to be done for these clients.

53. Ms Noble recognised that her representations to the trustee in bankruptcy as to the goodwill she retained, as opposed to Ingrams, was overstated. Clients referred by Legal Direct did transfer to Gold Law. There would be some, if limited, opportunities for repeat business with the clients from both departments. With the retention of the staff from both teams, as well as the clients who were taken, I am satisfied there was some continuing goodwill.

54. The portrayal by Mr Caplan and Ms Noble to the clients of Inghams that the teams or departments of conveyancing and dispute resolution were joining Lawyers Inc. Limited (paragraphs 15 and 19 above) demonstrates that there was an identifiable group of resources in the form of the workforce who delivered these services. Having regard to the fact that legal services are heavily based upon the lawyers and support staff who provide them, rather than other tangible goods, I am satisfied that there was a sufficient degree of autonomy within these two teams to reflect part of a stable economic entity which retained its identity after the transfer. It was more than presentational. After all, as Ms Noble stated in her witness statement, all that existed of Gold Law at its inception were staff and clients of the former firm Ingrams.

55. A legal practice is not comparable to a hairdressers or a public house where the location may be critical or the brand influential. A legal service has, at its core, its lawyers, para-legals and assistants and the service the public and clients entrust in them. There was the continuation of the activity of a legal service in the areas of conveyancing and dispute resolution. Activity alone is not sufficient, but the substantial number of clients from those departments who transferred as well as the number of staff establishes an identity of an organised group of resources of a former part of Ingrams.

56. Although the part of a business which transfers does not have to exist as its own discrete economic entity before the transfer, I am satisfied that in this case it did. That was identifiable in the organised group of staff and clients in the respective two departments with the defined activity each undertook. The Court of Appeal pointed out in **Fairhurst Ward Abbotts Ltd v Botes Bulding Ltd and others [2004] ICR 919**, it will be easier to satisfy the transfer test if that the part retained its identity after the transfer[7].

57. There were dissimilarities which I have listed above and which proved fatal to the case that the whole of the economic entity transferred. A transfer of part involves different considerations, because the part which has not transferred removes a number of necessary comparisons of the before and after.

58. The loss of Npower as a client had an impact; but that did not result in Gold Law not offering the dispute resolution service to the clients it had inherited from Ingrams, together with the retained staff. I do not regard the fact that the solicitor Ms Box was not engaged as carrying any real weight. The circumstances in which she and Miss Wray, as pregnant employees, were singled out before the transfer for a different approach (paragraph 17 above) left little doubt that the reason was attributable to their immediate absence through maternity leave rather than their membership of a particular department. That is because at the time the decision to treat them differently to other members of their respective departments was made, Npower had not indicated it was not prepared to transfer its work to the second

[7] Per Mummery LJ at 33.

respondent. Ms Box was contacted by Mrs Stott, on 29 July 2018 for permission to use her photograph. I infer Mrs Stott had in mind that her picture, at least, was of value for publicity purposes to a potential clientele in Hull. Only later did Mr Caplan inform Ms Box that there was no intention to take her on, unless the situation changed.

59. The conduct of the directors of the second respondent is criticised by the first respondent and claimants, in that it is said they had the intention of defeating the protection of TUPE and directed the course of events in such a way as to disadvantage the claimants.

60. Mr Quigley was proactive in the management of the Ingrams for the first half of 2017. He was present at the office weekly and gave direct instructions to staff to seek to preserve whatever interests might favour the second respondent. For example on 5 July 2017, he emailed Mrs Stott: "*I assume that no new work of whatever type is being turned away from this practice, which is soon to be part of the Lawyers Inc. Group. All new work that presents itself should and will be taken on. Any queries from the team and please send them my way and I shall deal with them accordingly.*" I accepted the evidence of Miss Wray, that this was sent immediately after he had overheard her telling a potential client that she could not provide a quotation as the firm were not taking work on. She had been acting on instructions of Ms Noble. Mr Quigley countermanded that, obviously to maximise the potential for clients' work to the advantage of the second respondent. The suggestion of Mr Caplan, in his evidence, that Mr Quigley's authority was restricted to introducing Ingrams as a potential acquisition lacked credibility. I am satisfied from the evidence of the claimants and Ms Noble that Mr Quigley was instrumental in the discussions which were taking place with a view to the takeover of Ingrams by the second respondent. I am also satisfied his activities in that respect had the endorsement and approval of the directors of the second respondent.

61. The correspondence throws some light on the thought processes of the directors of the second respondent in respect of the potential for engagement of eight members of staff from the respective two departments, set out at paragraphs 14 and 17 above (Mrs Ward was the only claimant who was retained but not in the list from the two departments). The disclosure of the contractual terms and incomes of these employees is reflective of an exchange of confidential information required under Regulation 11 of TUPE. It is that obligation which enables the transferor to process the confidential information of employees without their express consent. The correspondence also demonstrates aversion to referring to any 'transfer'. Mr Caplan said he wished to avoid any such transfer. No doubt that was true. He and Mr Tucker had given careful though as to where the liability for any redundancy payment would fall, on Ms Noble or the Secretary of State. These factors illustrate an intention to take measures to minimise the appearance of any transfer falling within TUPE. As such the fact the seven members of staff were made redundant and then recruited has no bearing on the question as to whether there had, or had not, been a transfer of part.

62. In conclusion therefore, there was a relevant transfer of part of Ingrams which retained its identity after transfer in the form only of the dispute resolution and conveyancing departments. The remainder, which included the criminal departments and the broader administrative support did not transfer.

63. Mr Boyd submitted that the reason for the termination of the material contracts of employment came about not because of the transfer, but because of the fact

Ingrams had to close because the PII insurance had expired. I have accepted Ms Noble's evidence that she could have obtained an extension, but chose not to because she required the second respondent to put into effect what had been agreed in principal. In other words, the expiration of the PII influenced only the time at which the transfer of the relevant part of the undertaking took place. It was not the principal reason for the dismissals. His submission that Regulation 4(3) would exclude the provisions of Regulation 4(1), because those employed in the part which transferred immediately before the transfer were not dismissed for a reason falling within Regulation 7(1) is therefore not well founded.

Which claimants were assigned to the organised group of resources subject to the transfer immediately before the transfer?

64. Not all members of staff at Ingrams worked in one of the three identified legal departments. Mrs Sarah Smith worked as partnership secretary. Mrs Barrett was the accounts manager and Mrs Bonner also worked in accounts. Mrs Densley was the compliance manager. Their work was for the administrative and regulatory benefit of the firm.

65. On the facts as presented in this case, identification of those assigned is not particularly difficult. No submissions were addressed to this question, but the evidence clearly establishes that the part which transferred was of two discrete and self-defining teams. The members of those teams were assigned to the organised group which transferred. Of the claimants that would be Miss Wray, Mr Hakim and Mrs Anderson, in respect of the conveyancing team and Ms Box and Mrs Ward of the dispute resolution team. It was not suggested that if there were a transfer of these parts, others could realistically have been regarded as assigned to the organised group which I have found transferred.

Further Directions

66. There shall be a case management discussion to discuss the further issues which arise for determination in the light of this judgment. The time estimate is for 2 hours.

Employment Judge D N Jones

Date 30 October 2018