



## EMPLOYMENT TRIBUNALS

Claimant

Respondent

**Mrs. Susan Bowers (1)**

v

**Glendale Managed Services (1)**

**Mr. James Hadgett (2)**

**Newcastle under Lyme Borough  
Council (2)**

**Heard at: Birmingham via CVP**

**On: 19 & 20 July 2021**

**Before: Employment Judge Wedderspoon**

**Representation:**

**Claimant (1): Mr. Lawrence, Counsel**

**Claimant (2): Mr. Moore, Counsel**

**Respondents (1): Mr. Middleton, Solicitor**

**Respondents (2): Mr. James Boyd, Counsel**

## JUDGMENT

1. The claims against the respondents for a failure to inform and consult are dismissed upon withdrawal.
2. The first claimant and the second claimant were assigned to the organised grouping of resources immediately prior to the transfer from the first to the second respondent.
3. The first respondent is dismissed from the proceedings
4. There will be a remedy hearing on 28 October 2021 by CVP for one day commencing at 10 a.m. Joining instructions to the video platform hearing will be sent to the parties separately.

## REASONS

1. By claim form dated 28 May 2020 the first claimant, Mrs. Susan Bowers, brought complaints of unfair dismissal, claim for a redundancy payment, notice pay and arrears of pay.
2. By claim form dated 30 June 2020 the second claimant, Mr. Hadgett, brought complaints of unfair dismissal, notice pay, a claim for a failure to inform/consult and statutory redundancy pay. The second claimant brought a second claim including additional claims for breach of contract and holiday pay. His solicitors received a receipt for the second claim from the Employment Tribunal but it does not appear that it was formally dealt with. The Tribunal had ordered the second claimant to provide a schedule of loss by 4 August 2020. In the second claimant's schedule of loss, he sets out complaints of holiday pay. On the day prior to the final hearing, it became apparent that the holiday pay claim had not been formally dealt with by the Tribunal. The second claimant made an application to amend his case on the basis that there was no prejudice; the claim had already been made; unfortunately, the Tribunal had not actioned it but the respondents were aware of the holiday pay claim by virtue of the service of the schedule of loss.

3. Only the first respondent objected to the amendment on the basis that it was a significant amendment and it occurred very late in the day. The first respondent accepted it could not argue it was prejudiced.
4. The Tribunal took into account the principles of **Selkent Bus Co. Limited v Moore (1996) IRLT 661, Vaughan v Modality Partnership UKEAT/0147/20** and the Presidential Guidance on case management and considered the nature of the amendment, the applicability of time limits and the timing and manner of the application. The Tribunal noted the nature of the amendment that it was significant and included additional claims of value. The timing: the application was made late in the proceedings but had already been lodged with the Tribunal (but not actioned). The Tribunal took into account that the core test in considering applications to amend is the balance of injustice and hardship in allowing or refusing the application. The Tribunal balanced the significant prejudice which the second claimant would suffer if his claims of value were not adjudicated upon against the conceded lack of prejudice to the first respondent if the claims were to proceed. The Tribunal concluded that in the circumstances that there was no prejudice in permitting the amendment application and it would be permitted.
5. The Tribunal was provided with an agreed bundle of 806 pages. The claimants relied upon their own witness evidence. The first respondent relied upon the evidence of Ben White, former Head of Business Development; the second respondent relied upon the evidence of Roger Tait, Head of Operations, Darren Green, Streetscene Business Manager and Simon Turner, Streetscene Neighbourhood Manager. The case was timetabled.
6. At the commencement of the hearing, there was no agreed list of issues. Upon the direction of the Tribunal an agreed list was prepared by Counsel and agreed :-  
*“The issues in light of the agreement between all parties that a TUPE transfer pursuant to Regulation 3(1)(b)(iii) took place on 1<sup>st</sup> April 2020, whereby an organised grouping transferred from the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent, were the Claimants (or either of them) assigned to the organised grouping of resources immediately prior to that transfer?”*

#### **LAW**

7. Regulation 3 (1)(b)(ii) of the Transfer of Undertakings (Protection of Employment) Regulations 2006 defines a service provision change as a situation in which *“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”*.
8. The relevant principles to be applied are set out in the cases of **Kimberley Group Housing Limited v Hambley (2008) ICR 1030, Churchill Dulwich Limited (in liquidation) v Metropolitan Resources Limited (2009) ICR 1380 and OCS Group Limited v Jones (UKEAT/0038/09)**; the requirement for an organised grouping of employees involves consideration of four issues; (a) identify the service which the putative transferor was providing to the client (b) list the activities which the staff performed in order to provide that service; activities are given an ordinary and every day meaning **Arch Initiatives v Greater Manchester West Mental Health NHS Foundation Trust (2016) ICR 607** (c) identify the employee/employees of the company who ordinary carried on those activities (d) consider whether that company organised that employee or those employees into a “grouping” for the principal purpose of carrying out the listed activities.
9. The requirement for an organised grouping of employees connotes that the employees be organised in some sense by reference to the requirements of the client in question, a deliberate putting together of a group of employees for the purpose of the relevant client work; **Seawell Limited v Ceva Freight (UK) Limited (2012) IRLR 802**. However, the client work need not be the sole purpose provided it is the principal purpose **Argyll Coastal Services Limited v Stirling UKEATS/0012/11**. There is no such grouping where a group of employees happen to work mostly on tasks for a particular client only from a combination of circumstances such as shift patterns and working practices, where

there was no deliberate planning or intent; **Eddie Stobart Limited v Moreman (2012) ICR 919**.

10. In the case of **Amaryllis v McLeod (UKEAT/0273/15)** it was held that the principal purpose of any organised grouping of workers must be assessed at the point immediately before the change of provider and not historically.
11. In the case of London Borough of **Hillingdon v Gormanley & ors (UKEAT/0169/14)** it was held that in order to decide whether the claimants had been assigned to an organised grouping of employees within the meaning of the Transfer of Undertakings (Protection of Employment) Regulations 2006 the organisational structure of the transferor and the role of the claimants including their contractual obligations within it must be considered.

### **FACTS**

12. For clarification in this Judgment the first respondent is referred to as Glendale Managed Services and the second respondent is referred to as Newcastle under Lyme Borough Council.
13. The first respondent is part of a group of companies that provide grounds management and maintenance services at a wide range of different premises. The first respondent group was contracted by the second respondent to provide a cemetery, crematorium and closed churchyards grounds maintenance service. This involved providing grave digging, back filling, attendance at funerals, grave aftercare and grounds maintenance at cemeteries and church yards within the borough of Newcastle under Lyme and at Newcastle Crematorium. The services to be provided under the contract between the First Respondent and Second respondent was known internally as "contract 13".
14. The first claimant commenced work with the first respondent from 2 October 1995 (see contract of employment dated 29 October 1999 page 108) as a contract administrator. The first claimant was dismissed on 31 March 2020. The first claimant was based at premises Unit 8 Stonewall Place, Silverdale, Newcastle under Lyme until the termination of her employment on 31 March 2020. In fact, all 10 employees working on the second respondent's contract (8 on the ground and the first and second claimant) were located at this workplace. Other employees of the first respondent not working on contract 13 were positioned in Leek. The first claimant's role involved providing support to the business and operatives that serviced contract 13.
15. From 1995 until about 2002 the first claimant's role consisted of administrative tasks only for contract 13 and throughout her employment the first claimant provided administrative support on contract 13.
16. As the administrator, the first claimant had responsibility for undertaking tasks such as processing payroll, ordering parts and machinery, PPE and materials, arranging and issuing repairs invoicing the second respondent for services and the administration of training for colleagues, all of which was solely for the purpose of servicing contract 13. Throughout the first claimant's employment with the first respondent her time was allocated to contract 13 for internal budgeting purposes (see pages 103-111). The first claimant's email address with the first respondent was [newcastle@glendale-services.co.uk](mailto:newcastle@glendale-services.co.uk) because she was the point of contact for the contract 13 services provided in and around Newcastle under Lyme. The first claimant was well known by the second respondent as working on contract 13 and was referred to in emails addressed to the [newcastle@glendale-services.co.uk](mailto:newcastle@glendale-services.co.uk) as "Sue". The first claimant was in regular contact with Mr. Green at the Council; described by the first claimant as her "go to person"; Jeanette Hollins, the registrar, Kay Hollingworth, Tim James (tree officer) and Diane Crank (creditors department) about issues such as requests for ad hoc work outside the scope of the contract, payment of the first respondent's invoices, tree work orders and a point of contact for communication issues.

17. There was contact between the second respondent and the first claimant about once per week. When the second claimant was on holiday the chargehand who was the ground supervisor would run ideas past the first claimant. The lead chargehand did not have an email address, so some enquiries for him from the second respondent came to the first claimant who passed them onto the lead chargehand. The first claimant would raise purchase orders for the first respondent to be used to purchase goods and services for the servicing of contract 13 and the team working on that contract such as boots for workers, diesel for plant and machinery and hand tools. All these purchase orders were budgeted against contract 13 (see pages 419 and 439). The first claimant organised the necessary work on vehicles.
18. Since the start of the first claimant's employment with the first respondent she worked on contract 13 in some capacity. In a contract dated 1 April 2002 at page 109 the operating company named as employer was Glendale. Their name changed overtime as they floated on the stock exchange.
19. The first claimant's contract increased to 31 hours in order for the claimant to deal with a new contract called Aspire. During the currency of the Aspire contract, the first claimant spent 50% of her time working on contract 13 and 50% of her time working on the Aspire contract. The Aspire contract ended in about 2018. The first claimant was asked in 2017 to work for Aspire because she was identified as being part of the grouping in 2017 but she declined and chose to stay working on contract 13.
20. When the Aspire contract ended the claimant's work time instantaneously increased so that she worked on contract 13. The claimant commenced on some contract work for Parkwood slightly before the Aspire contract ended she believed in 2017. (Mr. White clarified in his evidence the Aspire contract actually ended in March 2018). The first claimant estimated that by March 2017 until her termination on 31 March 2020 the first claimant was working on contract 13 for approximately 90% of her working time. As a result of the Aspire contract coming to an end the claimant had capacity to focus on the work required servicing contract 13. The claimant estimated that 10% of her working week was spent on Parkwood Leisure centres. Most of the administrative work was carried out by Head Office. In this role she was required to pick up tasks such as maintain staff training records to provide local support because the contract was based in Staffordshire moorlands.
21. "GEMM" was not a separate contract but a marketing idea. The first claimant provided some administrative work on this by producing spreadsheets and sending some emails out. She was requested to assist on this by the first respondent so she did so. The second claimant also assisted in sending out flyers.
22. The Second claimant was appointed in July 2004 as the contracts manager. He worked on contract 13 but also on other work and contracts for the first respondent. The largest part of the second claimant's workload was working for contract 13. The proportion ranged from 65% of this workload to 100%. Prior to 31 March 2020 the work for contract 13 amounted to 65 to 75% of his workload. In addition, the second claimant worked on Staffordshire Moorlands; this amounted to 25 to 35 % of his work. The GEMM work was no longer in existence. At the time of the existence of the Aspire contract, namely up to about 2017/2018, the second claimant did work on both the Aspire contract and contract 13. He considered his workload was not really 50/50 because it was so variable day to day. The Aspire contract concerned grass and hedge cutting whereas the second respondent's work tended to be more technical work for burials. The second claimant was also identified as being in scope for Aspire when the first respondent lost the work but he declined to move to Aspire and chose to stay with the first respondent. When the Aspire work disappeared he did more work for the second respondent to an extent because the workload did fluctuate.
23. The second claimant was in regular contact with the second respondent. This is supported by Mr. White of the first respondent who describes the second claimant as

being the first point of contact concerning the contract and that the second claimant dealt with all operational matters. Mr. White confirmed that the second claimant was responsible for the delivery of the service and managing the operational staff, liaising with the second respondent and dealing with any service user issues around the contract. The second respondent required his involvement as contract manager (see pages 328-9) and regularly contacted the second claimant requiring manager input. The second claimant was described as the contract manager on an audit report prepared by the NQA, an auditing body which conducts audits to ensure that the first respondent was complying with required standards.

24. At the start of 2018 in order to reduce costs, Mr. Green of the second respondent offered an office space at Keele University for the claimants to use. The second claimant looked at the space. It was too small and would have meant that the two claimants had to share office space so the offer was declined. This offer can only have been made by the second respondent because of the knowledge of and acceptance by the second respondent that both claimants were significantly involved in the work of contract 13.
25. At a meeting on 21 December 2017 (prior to the start of the Bereavement Services Grounds Maintenance for Cemeteries Crematorium and Closed Churchyards 2018-2020, at page 155-311 of the bundle) a meeting took place between Mr. Tait and Darren Green of the Council along with Jim Hadgett, Andrew Ansell (a previous director) and Ben White of Glendale in respect of the tender of £300,000 to achieve the Council's cap in respect of the works required. There was a dispute of evidence as to whether Mr. Ansell had stated that the cap of £300,000 could only be achieved by not attaching the costs of the claimants to the contract. On the balance of probabilities the Tribunal find that this was said as confirmed by Mr. Tait and the second claimant.
26. The agreement at page 139 states "*Glendale Countryside Limited will deliver the scheduled grounds of maintenance specification as submitted in the tender documentation for this tendering opportunity. Glendale Countryside Limited will additionally provide all labour and equipment to ensure that all burial related works are delivered as required anticipated to be in the region of 360 burials per year; additional ad hoc works will be undertaken in agreement with Newcastle Borough Council within the agreed staffing resource of eight full time equivalent staff exclusively undertaking work for this contact*". Mr. Green proposed an amendment at page 144 so to state "*Glendale Countryside Limited will deliver the scheduled grounds maintenance specification within the capacity available for the eight full time equivalent staff as submitted in the tender documentation for this tendering opportunity*". The wording of the contract was changed as demonstrated in the letter dated 22 January 2018 at page 147-8.
27. However, there was an understanding between both respondents (from the evidence of Mr. Tait) that the contract required a contract manager and an administrator and the second respondent does not dispute that both claimants worked on contract 13 because they were part of the delivery of the service. In reality, the Tribunal found, as long as the respondent provided the work for the Council how they discharged the contractual obligations was a matter for the first respondent's organisation but the reality was that all parties knew that both claimants were an integral part of the service provision.
28. The Tribunal found it would have been impossible for the first respondent to have provided the required service to the second respondent without dedicated administrative support; a matter acknowledged and accepted by Mr. Tait in his evidence to the Tribunal. The administrative tasks required included staff training, qualifications and monitoring (page 268); support to the contract manager required by clause C9.1 (page 269); keeping accurate employee and operation records clause C9.12.1 (page 271); administration required for grass routes sheet and burial sheets at clause C9.12.2 (page 271); work carried out records clause C.12.2 (page 271); C9.13 payroll C9.13, C10.2 complaints log (page 272); training records C12.6 (page 273) and COSHH records at clause C12.7 (page 273).

29. The Tribunal further notes that salaries of both claimants were internally accounted for by the first respondent as against contract 13 for the second respondents.
30. After a meeting between Mr. White of the first respondent and the second respondent on 8 January 2020, Mr. White sent an email to Darren Green of the second respondent on 13 January 2020 (page 367-8) proposing the terms of a 12 months extension of the contract between the respondents. On 24 February 2020 Darren Green of the second respondent informed Mr. White that the second respondent could not extend the contract on the first respondent's terms and provided two options; either (a) extend the current contract in the short term to allow for the tender process or (b) take the service in house (page 406). The contract between the respondents was due to end on 31 March 2020.
31. On 2 March 2020 Mr. White sent the employee information (page 415-6) to the second respondent. The information set out all 10 employees including the claimants as administrator and manager.
32. On 5 March 2020 by email (p.425-6) Darren Green confirmed the Council's intention to bring the service in house and he stated *"for clarity and the avoidance of doubt we do not consider the administrator and manager to fall under the provisions of TUPE given that they are not assigned to the contract for service."*
33. By an email dated 6 March 2020 Mr. White informed Darren Green that TUPE applied to the claimants. He also stated that all 10 employees were assigned to the contract and their principal role was to carry out work on the contract. He stated
- "Specifically section 3 (1)(b)(iii) a relevant transfer takes place when a service provision change occurs which is a "situation in which 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. In these circumstances the above regulations will then apply 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."*
34. Darren Green disputed this in his email dated 6 March (page 428) relying upon an extract of the award letter dated 9 January 2018 which states
- "Additional ad hoc works will be undertaken in agreement with Newcastle under Lyme Borough Council within the agreed staffing resource of eight full time equivalent staff exclusively undertaking work for this contract."*
35. The first respondent sought legal advice and its representatives, wrote to the second respondent (pages 565-6).
36. On 19 March 2020 the second respondent held the first engagement consultation meeting with the employees including the claimants.
37. On 26 March 2020 Mr. Tait of the Council attended the first respondent's offices to consult with the transferring staff, the eight operational staff. Neither claimant was invited to attend this meeting.
38. On 30 March 2020 Mr. White offered Mr. Tait an opportunity to interrogate the administrative processes of the first respondent because the systems showed that claimants were assigned to the contract deliver of contract 13. The second respondent declined this.

39. On 31 March 2020 Mr. White informed the claimants by letter their employment would transfer to the second respondent from 12 a.m. on 1 April 2020 and to report to Roger Tait, Head of Operations on 1 April 2020 (page 582).
40. On 1 April 2020 there were ten staff of the first respondent working on contract 13. The claimants and the chargehand had more than 20 years service each working on contract 13. The remaining employees had a minimum of 5 years each working on contract 13.
41. The second respondent appointed Mr. Turner to manage the Newcastle Under Lyme Bereavement Services contract following the contract going back in house on 1 April 2020. The manager, Mr. Turner runs the contract. His evidence is that he works a 37.5 hour week and the contract takes 10% of his time. The Tribunal did not consider that comparing Mr. Turner's work with that of the role of the second claimant as accurately comparable; Mr. Turner could draw upon the administrative and other back up within the machinery of the Council to support his role in the way the second claimant could not.

### **Submissions**

42. Mr. Boyd on behalf of the second respondent submitted that the starting point was to identify the service; namely the provision of cemetery and crematorium ground maintenance services to the Council. He submitted that 8 individuals were connected to contract 13 but the claimants were not part of the grouping and although they worked at various times of contract 13, they were not intentionally part of the organised grouping. The fact that the second respondent knew and was aware of the claimants does not assist the Tribunal in considering whether the claimants were part of the organised grouping. Importantly, he submitted the claimants also worked on the Aspire contract so much so that when that contract came to an end they were assigned to Aspire; they chose to stay employed by the first respondent. Further, when the Moorland contract was live, the second claimant did a significant amount of work on that contract. Mr. Boyd invited the Tribunal to consider the evidence of Mrs. Bowers and in particular her evidence that (a) you do what you are told to do (b) do the work when needed and (c) when she explained about the work for contract 13 and Aspire she described as the same work but with another set of men.
43. Mr. Boyd referred the Tribunal to the case of London Borough of **Hillingdon v Gormanley & Ors (UKEAT/0169/14)** and in particular to paragraph 27 which states *"..the issues of whether there was an organised grouping of workers satisfying the requirements of TUPE Regulations 3 (3)(a)(i) and whether the claimants were assigned to that grouping within the meaning of Regulation 4 (1) were separate questions requiring separate consideration."* To determine whether employees are assigned to a service changing hands under TUPE, the Tribunal will have regard to the way an organisation is structured and the employee's contractual duties within it. Consideration is required of the contractual duties of employees and their role in the organisational framework of the putative transferor.
44. Mr. Boyd also referred the Tribunal to paragraph 33 which referred to the judgment in **Eddie Stobart** namely that the provision in TUPE that the organised grouping of employees should have as its principal purpose the carrying out of certain activities within the meaning of Regulations 3 (3)(a)(i) required intent or planning to that effect applied not only to that issue but also to whether certain employee was assigned to that group. He also referred to paragraph 34 that emphasised the need to consider the contractual duties of the claimants. The EAT held that as the claimants could be called upon to perform duties other than for **Hillingdon** under their contracts of employment, the ruling that employees were assigned to the **Hillingdon** contract had to be set aside.
45. Mr. Boyd submitted that the contractual documentation showed that Mr. Hadgett was the contract manager at Glendale (see paragraph 1.1 at page 113) and the place of work was

Newcastle under Lyme. He submitted the reality of the situation is that Mr. Hadgett was working mainly for Aspire. He submitted it was important to look at the contract but that was not the full answer. He referred the Tribunal to the case of **Botzen v Rotterdamsche Droogok Maatschappij BV (1985) ECR 519** which stated that consideration should be given to the contractual duties of each claimant and their role in the organisational framework; material to consider the way in which an organisation is structured and the claimant's role within it in order to determine whether for the purposes of TUPE he/she is assigned to the organised grouping of employees carrying out relevant activities. He invited the Tribunal to consider the overarching intent and submitted that the overarching intent not to be assigned to the contract to carry out the function.

46. Mr. Middleton on the behalf of the first respondent provided a skeleton argument and supplemented this with oral submissions. Mr. Middleton stated that the Tribunal needs to consider the situation immediately before the transfer. He submitted that it could not be said that in the last two years that neither claimant was principally engaged working on contract 13. Both claimants had worked for 20 years on contract 13. The claimants were originally recruited to specifically work on contract 13. There was an expectation by the second Respondent that the contract would be administered and managed. The second respondent had even offered premises for the claimants to use. The contractual provisions at pages 268 to 269 expressly provided for a contracts manager. All 8 operational employees and the two claimants were based at Silverdale carrying out work on contract 13; no other work was carried out at Silverdale base. Mr. Tait accepted the document at page 147 it was silent in respect of an administrator or manager but the second respondent understood they were required for delivery of the contract. In reality, Mr. Middleton submitted is what happened in practice is not represented by the contractual provisions.
47. Mr. Moore on the part of the second claimant submitted that the second claimant did not have strong views as to whether he was assigned to the first or second respondent immediately before the transfer. He submitted that at paragraph 36 of the **Hillingdon** case the test adopted was from **Botson**, the ECJ case, which stated the decisive criteria to consider was whether there was a formed organisational teamwork and relationship. The second claimant's contractual documentation consists of a contract which was set up by reference to the activities carried out by the second respondent including the title and place of work. There after the second respondent did have some alternative contracts to manage including the Aspire contract. However, both claimants were integral to the performance of the contract with the Council; without their input the contract would not have functioned.
48. Mr. Lawrence for the first claimant submitted that the first claimant was assigned to contract 13 for 25 years; 90% of her duties concerned time on contract 13; salary accounted for budget. As relevant to assignment percentage of time spent relevant to the activities. He referred the Tribunal to the case of **Hillingdon**. The respondents do not dispute the evidence of the first claimant. The council was familiar with the first claimant; the email with Glendale was correctly assumed to be from the first claimant. The extent of the work the claimant was doing; the extent of interaction stands out. The first claimant's place of work was Silverdale were all employees involved in contract 13 work were based. The overarching intent can be considered by considering the place of work. Mr. Tait offered the claimants working on contract 13 office space. Mr. Tait in his evidence conceded the need for an administrator to manage the operatives. He submitted that who the claimant was assigned to is a question of fact and the Tribunal should consider all the circumstances of the case.

## **Conclusions**

### **The relevant activity/activities**

49. The relevant activity was the service of contract 13 which was the provision of cemetery and crematorium ground maintenance services to the Council.



**Immediately before the transfer whether there is an organised grouping**

50. There was an organised grouping of employees situated in the GB which had as its principal purpose the carrying out of activities namely the provision of cemetery and crematorium ground maintenance services of the Council.
51. The organised grouping was based at Silverdale. It consisted of 8 manual operatives as referred to in the contract between the respondents solely working on the contract for the second respondent. The contract itself was silent (at page 147) as to the administrator and the manager. They too were based at Silverdale. However, as conceded by the second respondent in evidence, it was recognised by the second respondent that contract 13 did require administration and management; it was not in reality simply a contract to provide operational work. This is corroborated by the evidence of the second respondent; there was a need for management and administration of the contract and also the second respondent's offer to effectively house both claimants in 2018 in an office to conduct the second respondent's work at Keele. Fundamentally, how the first respondent financed this arrangement was left to the first respondent by the second respondent.

**Whether the claimants were assigned to the part of the provision of the service transferred to a particular transferee**

52. The focus for the Tribunal should be the point of immediately before the transfer and consideration as to whether there was intent and planning that both claimants be assigned to contract 13. This necessarily involves consideration of the contractual duties of the claimants, the role of the claimants in the organisational framework, the organisation structure, the claimants roles and the overarching intent.
53. The background of the claimants' employment provides relevant context as to assignment. When the first claimant commenced her employment with the first respondent the only contract in existence was contract 13. In fact, the original purpose of the first claimant's role was to administer the contract. She was and remained an integral part of contract 13 throughout her employment in administering the contract. When the claimant was doing work for Aspire her work for contract 13 was shared with Aspire 13. The claimant was identified by reason of 50/50 split of her work between the Council and Aspire as working for Aspire but she chose to stay with the first respondent. Following the ending of the Aspire contract in early 2018 the first claimant's work for the Council on contract 13 increased overnight.
54. The Tribunal did not find the evidence of Mrs. Bowers namely her evidence that (a) you do what you are told to do (b) do the work when needed and (c) when she explained about the work for contract 13 and Aspire she described as the same work but with another set of men, as being inconsistent with an intentionally organised grouping or lack of assignment to contract 13. It was rather a reflection of an employment relationship with the first respondent. Tasks can change over the time of the employment relationship. At the time of the transfer, the first claimant's contractual duties and role principally concerned her administration of contract 13 which was a fundamental and integral part of providing the service to the second respondent. The organisational framework consisted of providing a team of people based at Silverdale working on contract 13 (operational employees exclusively worked on contract 13 along with the claimants who principally worked on contract 13). The structure required the first claimant to provide administrative work for the service of contract 13. The Tribunal rejects on the basis of this evidence that the claimants happened to work mostly on tasks for the second respondent; rather the Tribunal finds there was a deliberate planning and intent that both claimants do so in accordance with the set up at Silverdale and the need recognised by the second respondent for administration and management of the contract.
55. Further historically the second claimant conducted a significant amount of work for contract 13. When the Aspire contract was in existence the second claimant worked on this but it was not as much as 50/50 because the workload was so variable day to day. The Aspire contract concerned grass and hedge cutting whereas the second respondent's work tended to be more technical work for burials. Like the first claimant the second claimant was also identified as being in scope for Aspire when the first

respondent lost the work but he declined to move to Aspire and chose to stay with the first respondent. This was in about 2018. He also conducted work for Moorland but this was no more than 35% so that his principal work was for the second respondent.

56. The written contract between the respondents does not replicate the reality of what actually occurred or what was actually expected by the second respondent. There was an understanding and recognition by the Council that contract 13 had to be administered and managed so to provide the appropriate level of service. There was deliberate planning and intent that both claimants administer/manage the contract but the second respondent left the first respondent to determine how it financed that within an agreed budget for the contract.
57. In the circumstances the Tribunal finds that the first and the second claimant were assigned immediately prior to the transfer to the organised grouping of "contract 13".
58. In the circumstances the first respondent is dismissed from the proceedings.
59. There will be a remedy hearing for one day by CVP on 28 October 2021.

**Employment Judge**

R Wedderspoon

13 August 2021

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