



EMPLOYMENT TRIBUNALS

Claimant: Mrs Victoria Sanderson

Respondents: (1) City and Essex Ltd
(2) Advance Cleaning Services Ltd

Heard at: East London Employment Tribunal

On: 15 and 16 May 2024

Before: Employment Judge Illing

Representation

Claimant: Mr K Aggrey-Orleans (Counsel)
Respondent: Mrs Angela Babk (Company representative)

JUDGMENT

The judgment of the Tribunal is that: -

1. It is the Judgment of this Tribunal that the claimant was not assigned to the organised group that transferred following the service provision change and that her claims against the first and second respondent fail and are dismissed.

REASONS

Procedural history

1. The claimant issued this case on 15 May 2023 after early conciliation.
2. In October 2023, the second respondent was added to the claim. The second respondent is a wholly owned subsidiary of the first respondent and it is to this company the first respondent states that any transferring employees, transferred into.
3. There followed several adjourned preliminary hearings for case management until 6 February 2024 before EJ Gardiner. EJ Gardiner listed this case for a public preliminary hearing to determine the issue detailed below. This was detailed in the Case Management Orders that were issued following the hearing.
4. Further to the Case Management Orders and the Notice of Hearing being sent to the parties, the case was listed as a private preliminary hearing. The parties

were made aware of this error and confirmed that they were expecting a public hearing and consented to this. It was in the interests of justice to proceed and neither party was prejudiced in this decision. The hearing continued on the dates as listed as a public preliminary hearing.

The claims – in summary

5. The claimant was and is employed by Sanderson Cleaning Service Ltd (**SCS**). Up until 30 April 2023 SCS had the contract to provide cleaning services to the Leadenhall Building (**TLB**). At that point, as a result of a retendering exercise, the contract with SCS was terminated and awarded to the first respondent.
6. The first respondent submits that the window cleaning contract was then subcontracted to the second respondent.
7. The parties agree that TUPE applied to the retendering contract to clean TLB. It is also agreed that the employment of those in an organised grouping of employees assigned to the cleaning contract transferred under TUPE to the second respondent.
8. The Leadenhall Building is owned by Savills, who is at all times the Client.
9. The claimant claims that she was assigned to the organised grouping because for 15 of her 25 hours per week she was dedicated to the Client and managed this contract.
10. The respondents dispute that the claimant's employment transferred.
11. The case was listed for a public preliminary hearing to determine the following preliminary issue:
 - 11.1. Was the claimant assigned to the organised grouping of employees that was subject to a relevant transfer, so that her contract had effect after the transfer as if originally made between the person so employed and the transferee, by reason of Regulation 4(1) Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**)
 - 11.2. If so assigned, did the claimant's employment transfer to the first or the second respondent?

The hearing

12. We have a bundle of 273-pages
13. We heard evidence from the following on behalf of the claimant:
 - 13.1. Mrs Victoria Sanderson
 - 13.2. Mrs Rachel Christou.
14. We heard evidence from the following on behalf of the respondent:
 - 14.1. Mrs Susan Hookway
 - 14.2. Mr Joe Tyler

Findings of fact

Background

15. The first respondent is a limited company for which Mrs Hookway is the financial director. This company provides commercial cleaning services.
16. The second respondent, for which Mrs Hookway is a director, is a wholly owned subsidiary of the first respondent. This company provides commercial window cleaning services.
17. The claimant was employed by Sanderson Cleaning Services Ltd (**SCS**), for which she is a Statutory Director and Business Development Director. This company is a small family business and is owned by her parents. Mr Terry Sanderson, her father, is the CEO and Mrs Rachel Christou, her sister, is the Financial Director. They are also Statutory Directors. This company provides commercial window cleaning services.
18. SCS has 4 Statutory Directors consisting of the claimant, her mother, father and sister. The Tribunal was told that the company currently has 8 employees.
19. The Claimant commenced employment with SCS in 2009. At this time she carried out part time administrative work, which included back office work and administration.
20. There is no contract of employment for the original period of the claimant's employment. The Tribunal was told that as a member of the family, no contracts were issued.
21. I find that during this period, the claimant carried out back office and administrative work as she has detailed.
22. SCS were successful in their tender to provide services for The Shard. The claimant managed this service full time as the Vertical Contract Manager (**VCM**). However, due to ill health, the claimant was unable to fulfil this role full time and she returned to the administrative work. An employee was recruited for the full-time VCM role at the Shard.
23. Whilst operating as a full time VCM, the claimant was issued with a dedicated email account.
24. In 2016, SCS lost the contract for the provision of services to the Shard and the employee who had been recruited was transferred to the successful tendering company.
25. On 18 April 2016, the claimant was issued with a contract of employment. She was employed as the Business Development Director and this provided for 25-hours of work per week, which was based from home.
26. The contract has the following provisions:

3. Hours of work:

3.1.1 Your normal working hours shall be from 0800 to 1300 Monday to Friday – 25-hours per week.

27. The contract provided for a salary of £37,200pa and contained restrictive covenants including:
- 9.1.2. As a result of the clause above you covenant with us (promise) that you will not for a period of 6 months from the date of the contractual termination of this agreement:*
- 9.1.2.4 be involved in any capacity with any business concern which is (or intends to be) in competition with us.*
28. This contract of employment does not provide a date for continuous service. At the time this contract was prepared by Mrs Christou, Mrs Christou was seriously unwell during 2016. I find that the contract was prepared in April 2016 for the claimant and that any omissions or errors were unintentional.
29. On 10 May 2016 both the claimant and Mrs Christou, her sister, became statutory directors of SCS. The claimant stated that her position as a director was for succession planning only, in case something happened to her parents.
30. I am satisfied that the appointment of the claimant as a Statutory Director was for succession planning purposes only. However, I find that her appointment as Business Development Director was not. The claimant is identified as the Business Development Director in her contract, on LinkedIn, on the company website and in tender documents.[158] Her appointment as Business Development Director was for the benefit of the business as a whole.
31. The claimant has a disability, which impacts on her ability to physically attend a workplace. She has a need to return home by lunchtime to enable her to administer her treatment and whilst she can be away from home for a full day, this is an exception and can only be maintained for a few days.
32. The claimants working hours were 0800 – 1300 Monday to Friday and her primary place of work was from home.

The Leadenham Building Contract

33. In 2016 SCS were successful in the bid for TLB for its window cleaning services.
34. The services provided by SCS included the cleaning of the windows of the building. This included work at height in addition to any work in any voids. This required organisation of the individual operatives and machinery in addition to the scheduling of works to co-ordinate with other maintenance and management of the building.
35. It is the claimant's evidence that on a daily basis, the operatives, i.e. employees who carried out the cleaning work, would attend the building and would be assigned tasks. This took place at 0600 each morning and was carried out by Mr Terry Sanderson as the claimant was unable to attend early in the morning, or every day.
36. The claimant stated that she would attend the site on Mondays and Fridays and on another day as required. It is her position that she dedicated 15-hours of work to TLB each week out of her 25-hours per week as contracted to SCS.

37. On a weekly basis the claimant participated in a Monday morning managers meeting with the Client, which would last approximately 1 ½ hours. She would also attend a Friday morning meeting with contractor managers, which would last approximately 45-minutes.
38. The claimant also stated that she would see the staff whilst onsite and that she would complete the paperwork required for TLB whilst onsite, as it was a paper based task and not one that could be completed at home. She also stated that her tasks included face to face meetings with SCS staff , helpdesk requests, scheduling and working with other contractors. She was the manager for the Client and would carry out whatever tasks were required, which included attending the site for floods or responding to urgent emails outside of work hours.
39. Due to her disability, the claimant was not able to attend TLB for the full 15-hours per week. The claimant stated that it was agreed with SCS and the Client that she would conduct her work on a hybrid basis, working from home where she could and attending site as required.
40. There is only limited documentation to evidence the claimant's working pattern and tasks. [239 onwards]. It is the claimant's position that she attended TLB on a Sunday to assist with repairs following a flood. The incident report that I was referred to [239] details the circumstances of the flood, which occurred when 2 SCS operatives opened a void door in windy conditions. The wind caught the door and blew it further open causing it to hit a sprinkler, which then caused the flood.
41. There is no documentation for the claimant's working pattern. There is no documentation from either SCS or the Client to confirm the break down in the claimant's hours or the agreement for hybrid working.
42. The claimant states that she has worked for the Client for 5-years on a hybrid basis, without complaint.
43. The Vertical Cleaning Tender Questions [71] confirm that the VCM worked for the Client for 15-hours per week. It also states that she was a visiting VCM.
44. The claimant was asked to provide documentation for her working hours, but did not do so.
45. The claimant is named in the Client's telephone directory as the VCM. [169] This is alongside other Building Management and contractor contact details.
46. I found that the claimant's evidence consistent and was challenged based on the lack of documentation.
47. The company is a small family run business. The claimant stated that she did not receive updated employment documents as she was a member of the family and that they did not provide these documents.
48. Despite the lack of documentation, I accept that the claimant was providing a VCM service to the Client for an average of 15-hours per week throughout the period of 2019 to 2023.

49. In 2023 the contract for the cleaning of TLB was put up for tender. Both SCS and R1 entered this tender competition.
50. Within the tender [158], the claimant is identified as the Business Development Director and that she is responsible for TLB as well as being responsible for the Business Development and General Operations for SCS.
51. SCS were unsuccessful in their tender and the contract was awarded to R1. As a consequence of this, SCS were required to provide Employee Liability Information (ELI) to R1. On 10 April 23 [74], R1 contacted SCS to obtain this information. There was a degree of urgency as the new contract was scheduled to start on 1 May 2023.
52. On 11 April 2023 [76], the claimant emailed R1, specifically Mr Hookway to ask about her TUPE.
53. Mr Hookway responded asking [75]:
- I'm a little confused by your email – your job title, both in your email and on the company website, is Business Development Director. Why would you consider your self eligible for a TUPE transfer on this contract?*
54. The claimant confirmed that she was a Director of SCS, but also the Contract Manager at TLB 3-days per week and that she had been managing the team for nearly 5-years. [75]
55. On 14 April 23, the claimant advised Mr Hookway by email that because over 50% of her employment was to manage TLB she would be eligible for TUPE [77]
56. Mr Hookway responded to the claimant stating that the percentage of time spent on a contract is only a starting point [89] and that she had other contracts for News UK and Starwood Hotels and that she was responsible for general operations within the company including accreditations and qualifications.
57. The claimant responded [90] to Mr Hookway. She confirmed that she was no longer contract manager for News UK and that she did not complete accreditations or qualifications. She further stated that her role within SCS was not relevant.
58. It was admitted by Mrs Christou in evidence that the ELI information provided was incorrect when it was first presented to R1. [85] Mrs Christou confirmed that the information provided in relation to the claimant's pay as a VCM, was the amount that was recharged to the Client, which is less than the pay the claimant actually receives. Mrs Christou admitted that the claimant receives pay in accordance with her contract of employment [98], this is for all hours worked irrespective of the tasks being completed by her. The claimant was also eligible for a bonus and for full pay during sickness absence.

Other roles

59. The claimant accepted that she was engaged in other roles during her 25-hours of contracted work to SCS.
60. I have found that she provided an average of 15-hours per week to the Client.

61. The claimant has accepted that she also carries work as a contract manager for Starwood Hotels, now Marriot. The claimant states that this was up to 4-hours per week.
62. The claimant has accepted that she carries out work as the Business Development Director for approximately 6-hours per week in the following way:
 - 62.1. She completes back office administration.
 - 62.2. She is the point of contact for HR issues.
 - 62.3. She is the point of contact for IT issues.
 - 62.4. She assists Mr Sanderson in tendering for new work, in that she “puts out feelers” and attends the “walk arounds” and takes photographs and asks questions to enable Mr Sanderson to complete tender documents. The claimant stated that she carries out this task as her father is no longer able to do this as he has COPD and could not walk the distances as required.
 - 62.5. That she can complete the accreditation and qualification paperwork as required.
63. Mrs Christou confirmed that she is responsible for payroll and would complete invoices, purchase and sales ledgers and VAT returns for the company accountant to complete company documentation.
64. Mrs Christou advised that she has certain roles within the company that the claimant would not be able to complete and that the claimant has certain roles within the company that Mrs Christou would not be able to complete.
65. The claimant admitted in evidence that should she transfer, she would wish to continue with her work with SCS for the balance of her hours, including as Business Development Director.
66. I find that the claimant did provide an average of 15-hours of work for the Client working hybridly and I also find that she carried out further work for another client and fulfilled duties for SCS in her role as Business Development Director for and on behalf of SCS. I find that SCS is a small family business of only 4 directors and the claimant has established a relationship with the Client. I find that there is an overlap of activities between the claimant’s role as VCM and her role as BDD, particularly in client liaison and business development.

Contractual Benefits

67. Throughout her employment with SCS and irrespective of the tasks being completed, the claimant has received pay in accordance with the 2016 Contract. Additionally, she has received bonus payments from SCS.
68. The claimant also received other benefits that were only open to members of the family. These included:
 - 68.1. Full pay during sickness absence
 - 68.2. Flexible holiday booking

68.3. No requirement to complete time sheets

The law

69. This case involved the Transfer of Undertakings (Protection of Employment) Regulations 2006, which are referred to in this Judgment as TUPE. Regulation 3 of TUPE provides, so far as relevant:

3(1) These Regulations apply to—

(a) 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;

(b) a service provision change, that is a situation in which—

...

(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

...

and in which the conditions set out in paragraph (3) are satisfied.

...

(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.

Regulation 4 of TUPE provides, so far as relevant:

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.

70. HHJ Eady QC summarised the effect of these provisions in **Costain Ltd v Armitage and another UKEAT/0048/14/DA** as follows: "So, first, there must be an organised grouping of employees dedicated to the client (reg 3(3)(a)(ii)) and, second, the employee must be assigned to that grouping". Those questions are "analytically distinct" per Underhill P (as he then was), at para 16 **Eddie Stobart Ltd v Moreman (2012) UKEAT/0223/11/ZT, [2012] IRLR 356, [2012] ICR 919.**

71. The concept of an organised grouping implies an element of conscious organisation by the employer of its employees, in the nature of a team, which has,

as its principal purpose, the carrying out of the activities in question. There must be deliberate putting together of a group of employees for the purposes of the relevant client work it is not a matter of happenstance **Seawell Ltd v Ceva Freight UK Ltd [2012] IRLR 802** at para 17 and **Eddie Stobart Limited v Moreman [2012] IRLR 356 EAT** at paras 18-20.

72. In **Seawell Ltd v Ceva Freight UK Ltd [2013] CSIH 59, [2013] IRLR 726, 2013SC 596**, the Court of Session approving the Judgment of Lady Smith in that case, reported at [2012] IRLR 802 stated “There will not be an “organised grouping of employees” with the relevant purpose if the employees in question simply happen to be working on that activity at the time of the transfer, perhaps because shift arrangements mean that they are working on a particular contract at a particular time without their actually being dedicated to it, or they are working on that activity, even if for 100% of their time, for some other entirely fortuitous reason.
73. On the second question, that of a particular employee's assignment, the starting point is generally taken to be the Judgment of the European Court of Justice in **Botzen and others v Rotterdamsche Droogdok Maatschappij BV [1985] ECR 519, [1986] 2 CMLR 50**, where it was stated: “An employment relationship is essentially characterized by the link existing between the employee and the part of the undertaking or business to which he assigned to carry out his duties. In order to decide whether the rights and obligations under an employment relationship are transferred under [the Directive] . . . it is therefore sufficient to establish to which part of the undertaking or business the employee was assigned.”
74. That talks of assignment in terms of a business undertaking or part, rather than any service provision change, but the language of assignment remains the same. In approaching that question, it is often tempting to try to establish assignment by reference to the percentage of time an employee is engaged in working in the relevant undertaking or part or on the particular activities in question. That might not be an irrelevant question, but it is not the test.
75. In **Duncan Webb Offset (Maidstone) Ltd v Cooper and another [1995] IRLR 633** the EAT observed that the question of assignment is one of fact for the Employment Tribunal, albeit that it might be relevant to look at the amount of time an employee spends on one part of the business or the other, the amount of value given to each part by the employee, the terms of the contract, showing what the employee could be required to do, and how the cost to the employer of the employee's services had been allocated between the different parts of the business (see para 1 of the Judgment of Morison J in that case). What is to be given weight in any particular case will be a matter for the Employment Tribunal as the tribunal of fact, but it will not be determinative that the different aspects of the employee's work are carried out for the same client.
76. As Lady Smith observed, at para 19 of her Judgment in **Edinburgh Home-Link Partnership v The City of Edinburgh Council (UKEATS/0061/11 10 July 2012)**: “Regarding the reg 4 issue of assignment, the question has to be asked in respect of each individual employee. It is not to be assumed that every employee carrying out work for the relevant client is assigned to the organised grouping . .

. . *If, for instance, an employee's role is strategic and is principally directed to the survival and maintenance of the transferor as an entity, it may then not be established that that employee was so assigned.*"

77. In **Argyll Coastal Services Ltd v Stirling and others (UKEATS/0012/11**, 15 February 2012, Lady Smith again had to consider the interplay between regs 3 and 4, TUPE and offered the following analysis. First, in respect of the question of an organised grouping of employees for reg 3(3)(a)(i) purposes: *"It seems to me that the phrase 'organised grouping of employees' connotes a number of employees which is less than the whole of the transferor's entire workforce, deliberately organised for the purpose of carrying out the activities required by the particular client contract and who work together as a team.....Turning to 'principal purpose' there seems to be no reason why the words should not bear their ordinary meaning. Thus, the organised grouping of employees need not have as its sole purpose the carrying out of the relevant client activities, that must be its principal purpose.....If a Claimant can show that a relevant service provision change occurred, he then requires to satisfy the requirements of regulation 4(1). That involves considering whether or not the Claimant was assigned to the organised grouping of resources referred to in regulation 3(3)(a)(i)."*
78. Lady Smith then, going on to consider the question of assignment stated: *"The issue of whether or not a particular employee was assigned to the 'organised grouping of employees' affected by the transfer and thus entitled to the protection of TUPE is not a mere formality. It can only be resolved after a proper examination of the whole facts and circumstances. Being involved in the carrying out of the relevant activities immediately prior to the transfer will not necessarily mean that that employee was assigned to the organised group."*
79. In **London Borough of Hillingdon v Gormanley UKEAT/0169/14/KN**, the EAT concluded that the Employment Judge had *"failed to consider and take into account the material factor referred to in **Botzen**, the organisational structure within which the employment relationship took effect. Whilst whether an employee is so assigned is a matter for the ET, all relevant material is to be considered, including, in my judgment in this case, the duties the Claimants could be called upon to perform under their contracts of employment."*
80. In **McTear Contracts Ltd v Bennett and others UKEATS/0023/19**, applying the ECJ decision in the case of **ISS Facility Services v Govaerts, C-344/18**, the EAT held the question of whether (and which) employees transfer following a service provision change will need to be considered differently in cases where there are two or more incoming service providers. Potentially, an employee's contract could be split between multiple transferees. The EAT considered that it would not be desirable to take a different approach to the transfer of employment contracts under TUPE according to whether it was a service provision change (i.e. outsourcing) or a business transfer. The same considerations should apply to both types of transfer. In principle, there was no reason why an employee could not hold two (or more) contracts of employment with different employers at the same time, if the work was clearly separate.

81. The Claimant's representative has also provided the Department for Business Innovation & Skills January 2014 Guide to *Employment Rights on the Transfer of an Undertaking*, which I have also taken into consideration.
82. In summary, having identified the activities concerned, the employment tribunal must ask: (1) whether there is an organised grouping of employees, the principal purpose of which is to carry out the activities on behalf of the client; and (2) whether employees are assigned to it.

Submissions

83. Both representatives provided helpful concluding arguments, which the Tribunal has taken into consideration.

Conclusions

TUPE

84. Was the claimant assigned to the organised grouping of employees that was subject to a relevant transfer, so that her contract had effect after the transfer as if originally made between the person so employed and the transferee, by reason of Regulation 4(1) Transfer of Undertakings (Protection of Employment) Regulations 2006 (**TUPE**)
85. If so assigned, did the claimant's employment transfer to the first or the second respondent?

What is the service provision change, i.e. what are the activities concerned?

86. The service being provided was the service of vertical cleaning of TLB. The service carried out by SCS for the Client before the tender was fundamentally the same after the change in service provider, and the parties accept this.

What is the principal purpose of the activities concerned?

87. The principal purpose of the activities concerned was the day to day cleaning of the building in accordance with the Client's needs. This required management of the employees carrying out the cleaning duties and management and co-operation with the building management team and other contractors on site.
88. Cleaning was required internally and externally, requiring work at height and in voids of the building.

What is the Organised Grouping, the principal purpose of which is to carry out the activities on behalf of the Client

89. In order to carry out the activities on behalf of the Client the contractor, whether SCS, R1 or R2, would need to provide operatives to carry out the cleaning on a day-to-day basis.
90. There has been no evidence or suggestion that the operatives would be assigned ad hoc. These operatives are employed by the contractor and provide day-to-day services and I am satisfied that they would form part of an organised grouping.

91. Likewise, the operatives require supervision and management to fulfil the Client's requirements. I am satisfied that any supervisor or manager would fall within the organised grouping to fulfil the principal purpose.

Who is assigned to the Organised Grouping

92. The question is whether the claimant is assigned to the organised grouping. This is dependant on a range of factors, for which there is no exhaustive list and the fact that an employee was working on the transferring activities immediately before the transfer is not on its own sufficient to show assignment to the grouping (**Costain Ltd**)
93. I am satisfied that SCS has deliberately put together a team in order to carry out the work for the Client. I am also satisfied that the role of VCM would fall within that organised grouping.
94. Furthermore, I am satisfied that the claimant was employed by SCS to work on the transferring activities immediately before the transfer.
95. In considering whether the claimant is assigned to the organised grouping, I must consider all of the circumstances and consider the link between the employee and the work or activities that are performed.
96. This is not just a question of how much time is spent doing the work that is transferring, although this may be relevant. Other relevant factors include job role, employment contract and why an employee may carry out certain roles. For example, an employee in a senior role with responsibilities for the whole of the employer's business might not be assigned to a part of the business that is transferring, even if this takes up most of the employee's time.
97. The pertinent facts and circumstances of this case are as follows:
- 97.1. SCS is a small family business with 4 directors who are all family members.
 - 97.2. The claimant has been employed by SCS since 2009.
 - 97.3. From 2016, the claimant is a statutory director of the business for succession purposes.
 - 97.4. The claimant has an employment contract as a Business Development Director since 2016.
 - 97.5. The claimant is advertised in tender documents, on the company website and on LinkedIn as the company Business Development Director.
 - 97.6. The claimant has carried out the work as VCM for the Client from 2016 until the service provision change.
 - 97.7. The claimant spent the majority of her working hours (60%) fulfilling activities for the Client.
 - 97.8. The claimant has carried out other contract manager tasks at the same time as providing services to the Client.

- 97.9. The claimant has carried out tasks that are consistent with her employment as a Business Development Director at the same time as providing services to the Client.
- 97.10. The claimant has been receipt of pay and other benefits that are consistent with her employment as a Business Development Director at the same time as providing services to the Client.
- 97.11. A further circumstance to consider is that SCS and R1 and its subsidiaries are competitors and the issue of conflict of interest could arise if the claimant worked for both companies.
98. This has been a difficult set of circumstances in which I have had to balance the facts.
99. On the one hand, the claimant has provided a dedicated service to the Client for 5-years for the majority of her working hours.
100. On the other, the claimant is a Director of a small family owned company and assists the business as a whole to maintain its existence. By this I have found that she provides administrative support and activities that no other directors could complete and she is also engaged in activities to win contracts and find further work for the company. I must therefore balance and evaluate these survival and maintenance activities against her activities for the Client to determine whether the claimant's role was, in fact strategic or whether she is assigned to the organised group and therefore transfers.
101. For this, I must consider how the claimant's activities were principally directed and the link between her and the work or activities that she performed.
102. In considering the circumstances as I have detailed above, I find that the claimant's activities were principally directed towards the survival and maintenance of SCS and she was remunerated for this. The activities carried out by the claimant for the Client were overarched by her role as Business Development Director and I am satisfied that the claimant is not assigned to the organised group of employees that have transferred following the change in service provider.

Judgment

103. It is the Judgment of this Tribunal that the claimant was not assigned to the organised group that transferred following the service provision change and that her claims against the first and second respondent fail and are dismissed.

**Employment Judge Illing
Dated: 28 May 2024**